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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-902

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent,

—and—

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., etc., et al.,

Respondents,

—and—

LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

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SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

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NATIONAL LABOR RELATIONS BOARD,

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LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, hereby requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on September 6, 1978.

OPINIONS BELOW

The decision of the Court of Appeals was rendered on June 30, 1978. It is reprinted in the Appendix at page 8a. The decision and order of the National Labor Relations Board are reprinted in the Appendix at page 43a, and are reported at 231 NLRB No. 31.

JURISDICTION

The judgment of the Court of Appeals was entered on September 6, 1978 (Appendix at page 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the decision of the Court below which permitted the unilateral withdrawal of employers from a multi-employer bargaining unit after the commencement of joint negotiations, and which failed to require the Association and the individual employers thereafter to bargain with Local 455 despite flagrant unfair labor practices committed by both the Association and the Independent Employers is erroneous and imperils the future of multi-employer bargaining by freeing respondents from any effective sanction?

2. Whether individual employers, bargaining through a multi-employer association, should be permitted to withdraw from

the association after an impasse in bargaining and if so, are they thereafter obliged to bargain with the union on an individual basis?

3. May an unconditional offer by a union on behalf of strikers to return to work, be refused, because the union in a separate communication which made no reference to the strikers asked the company to sign a contract with it?

STATUTES INVOLVED

Section 8(a)(1) of the National Labor Relations Act [29 U.S.C. § 158(a)(1) p. 5] provides as follows:

> "(a) It shall be an unfair labor practice for an employer -
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

The pertinent provisions of Section 8(a)(2) [29 U.S.C. § 158(a)(2)] are as follows:

> "(a) It shall be an unfair labor practice for an employer -
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

The relevant provisions of Section 8(a)(3) [29 U.S.C. § 158(a)(3) are as follows:

> "(a) It shall be an unfair labor practice for an employer -
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Section 8(a)(5) [29 U.S.C. § 158(a)(5)] states:

> "(a) It shall be an unfair labor practice for an employer -
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

STATEMENT OF THE CASE

Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (hereinafter referred to as "Local 455" or "Union") for many years was the collective bargaining representative of the production and maintenance employees of the individual Respondent Employers, each of which was party to successive collective bargaining agreements with the Union. The last of such

contracts expired on June 30, 1975 (ALJ* 4, 5).

In 1975 Respondent Employers, together with certain other employers formed the Independent Association of Steel Fabricators, Inc. (hereinafter, "Association"), which thereupon requested Local 455 to bargain with it on behalf of its member employers. Local 455 agreed to so bargain as to Respondent Employers and several other employers. The parties thereupon commenced bargaining on that basis, but failed to reach agreement prior to June 30, 1975 and on July 1, 1975 a strike ensued (ALJ 5, 6, 8).

The record establishes, and the National Labor Relations Board (hereinafter, "NLRB") found ultimately that the Association and employer members embarked on a course designed to replace Local 455 (ALJ 6). The Association retained a labor relations advisor who was an arbitrator under a contract between Local 810 of the International Brotherhood of Teamsters (hereinafter, "810") and another employers group (ALJ 15). He informed them that other unions might be interested in their employees, and on the Association's consent, arranged to have 810 contact their employees (ALJ 15, 16). Arrangements were also made to have 810's

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* "ALJ" refers to pages of the Administrative Law Judge's decision which was adopted by the Board.

president address the Association (ALJ 15). He advised the assemblage that costs under the 810 contracts were less than under a contract with Local 455. Employer members visited 810 headquarters and examined its contracts (ALJ 14, 16). Respondent Employers began a coercive campaign to force their employees to join 810, despite the fact that the vast majority of their employees joined the Local 455 strike and remained loyal to it (ALJ 17). Among other things, the Respondent Employers promised benefits to employees if they joined 810; they made threats of plant closure and discharge of employees, if they did not; they transported their employees to 810's offices; and they did, in fact, discharge employees who resisted their demand for support of 810. They advised their employees that they would never sign a contract with Local 455 (ALJ 17-24, 55, 56).

Finally, between November 1975 and February 1976, despite their legal obligations, and in disregard of their employees' desires, nine of the Respondent-Employers actually signed contracts with 810. These contracts required, as a condition of employment, that employees become and remain members of 810, and also provided for deduction of union dues (ALJ 26).

On January 16, 1976, the Association wrote to the Union advising it that nineteen of its members (including Respondent Employers) had withdrawn bargaining authorization from the Association. Local 455 received the letter on January 19, 1976. The Union did not consent to said withdrawals (ALJ 12, 13).

As of January 16, 1976 six Respondent Employers had signed contracts with Local 810, i.e., Roman, Greenpoint, Paxton, Melto, Long Island and Mohawk (hereinafter referred to as class one employers, as they were so referred to by the Circuit Court). Three other Respondent Employers, signed with Local 810 after the January 19, 1976 notice of withdrawal from the Association, i.e., Master, Koenig, and Cervenka (hereinafter referred to as class two employers, as they were so referred to by the Circuit Court). Seven other employers gave notice of withdrawal but did not sign an agreement with either Local 810 or Local 455, i.e., Zaffino, Ikenson, Achilles, Kuno, Peele, Spigner, and Roma (hereinafter referred to as class three employers, as they were so referred to by the Circuit Court).

On January 23, 1976, Local 455 met with and signed identical contracts with the five remaining employers who had not withdrawn their authorization from the Association to bargain. They signed individually, and as "members of the Association" at Local 455's insistence and on the assertion of the president of Local 455 that he was dealing with them as the Association. Two additional members subsequently signed (Trojan and Heuser) (ALJ 13, 14, 49, 50).

The Union thereupon sent a letter to the balance of the Respondent Employers asking them to sign the said contract. They refused to do so. The Union sent a separate communication to each Respondent Employer making an unconditional offer on behalf of their employees to return to work. They

refused this request as well. None of the striking employees were reinstated.

THE BOARD'S CONCLUSIONS AND ORDER

The principal findings of fact and conclusions of law of the Administrative Law Judge were adopted by the Board in a decision dated August 11, 1977. The Board found that:

1) Respondent Employers and Respondent Association had wrongfully solicited their employees to abandon Local 455 and to join 810, and had rendered unlawful assistance to 810 in violation of Sections 8(a)(1) and (2) of the Act (ALJ 25, 60). Respondents made threats to close their plants and/or to discharge their employees in order to induce them to support 810 and to abandon Local 455, in violation of Section 8(a)(1) and (2) of the Act (ALJ 25, 60). The execution of the collective bargaining agreements between nine Employer Respondents and 810 was unlawful and contrary to the employers' legal obligations to bargain with Local 455, and also constituted unlawful assistance to 810 in violation of Sections 8(a)(1)(2) and (5) of the Act (ALJ 25, 26, 59, 61).

2) At the time of the Respondent Employers' withdrawal from the Association there was no impasse in bargaining, and in any event an impasse would not justify withdrawal from Association bargaining.

3) By withdrawing from multi-employer bargaining and by refusing to acquiesce in the Union's demand that they execute the January 23rd agreement, the Association and the Employer Respondents (except for Trojan and Heuser) violated Sections 8(a)(1) and (5) of the Act (ALJ 61).

4) The Respondent Employers had wrongfully refused to reinstate their striking employees, an unconditional offer to return to work having been made on their behalf by the Union.

The Board ordered the respondents inter alia, to cease and desist from their 8(a)(1)(2) and (5) violations of the Act; and to recognize and bargain collectively with Local 455; to implement and adopt the contract negotiated by the five employer members of the Association; and ordered all employers who had bargained collective agreements with Local 810, to cease and desist from recognizing said Local and to cease giving effect to the collective bargaining agreement with Local 810 or any renewal thereof unless and until Local 810 was certified by the Board.

THE COURT OF APPEALS' DECISION

The Court enforced that portion of the Board's order which was based on its finding that certain Respondent Employers had solicited their employees to join 810 and to abandon Local 455 in violation of Sections 8(a)(1) and (2) of the Act. The

Court also agreed with the Board that the Employer Respondents, by threatening to close their plants and/or discharge their employees in order to induce them to join 810 had violated Section 8(a)(1) of the Act, and that the Association violated Sections 8(a)(1)(2) and (5) of the Act by their aid to and support of 810, and by their unlawful solicitation and other actions directed to getting their employees to abandon Local 455 and to join 810.

The Court in disagreement with the Board found that an impasse in negotiations had occurred by January 19, 1976 when Local 455 received a withdrawal letter signed by nineteen members of the Association (page 3771 of the decision). The Court held further that an impasse in negotiations justifies a party's unilateral withdrawal from multi-employer negotiations. The Court held that the Board's order that respondents were bound by the agreement negotiated by five members who had not withdrawn from the Association could not be enforced as there was no agency relationship between the majority and minority who had signed the contract (page 3777 of the decision). The Court ruled in addition, that the striking employees were not entitled to reinstatement, as the Union had sent a letter to each member employer asking it to sign the contract, and that such communication in effect made its unconditional offer to return to work, conditional.

As to the Respondents' obligation to bargain with Local 455, the Respondent Employers were separated into three classes:

those who signed with Local 810 before giving notice of withdrawal (designated class one); those who signed after giving notice of withdrawal (designated class two); and those who gave notice of withdrawal but did not sign an agreement with either union (designated class three).

The Court enforced those portions of the Board's order requiring respondents in class one to cease recognition of and to abrogate their contracts with Local 810 unless and until it is certified. However, the Court did not impose a bargaining order but left it to the Board's discretion whether to do so, presumably upon the petition of an interested party.

The Court ruled as to class two employers that Local 455 as the incumbent was "entitled to a rebuttable presumption of continued majority status" (p. 3779), and that the execution of contracts with Local 810 constituted a refusal to bargain which was excusable only if Local 455 had lost its majority or the employers had a rational basis for doubting its majority. The Court again decided that the Board should make the determination whether a bargaining order should be imposed.

With respect to class three employers the Court ruled that the "union apparently never elected to request bargaining with the individual employers". The Court held that it could not conclude that those respondents in class three who signed with neither union unlawfully refused to bargain and therefore found that these respondents did not violate Section 8(a)(5) (p. 3780).

Finally while stating that it would ordinarily remand the case to the Board for further proceedings in conformity with the opinion, the Court did not do so but left it to the parties to petition the Board for further evidentiary hearings if such were desired (p. 3786, n. 37).

REASONS FOR GRANTING THE WRIT

1. THE INSTANT CASE IN WHICH THE COURT OF APPEALS PERMITTED THE UNILATERAL WITHDRAWAL OF EMPLOYERS FROM A MULTI-EMPLOYER BARGAINING UNIT AFTER THE COMMENCEMENT OF JOINT NEGOTIATIONS, AND WHICH FAILED TO REQUIRE THE ASSOCIATION AND THE INDIVIDUAL EMPLOYERS TO THEREAFTER BARGAIN WITH LOCAL 455 DESPITE THE COMMISSION BY BOTH THE ASSOCIATION AND INDIVIDUAL EMPLOYERS OF EXTENSIVE AND PERVASIVE UNFAIR LABOR PRACTICES, PRESENTS AN IMPORTANT QUESTION OF LAW WHICH HAS NOT HERETOFORE BEEN PASSED UPON BY THIS COURT

The Court below, in disagreement with the NLRB, found that an impasse in negotiations had occurred and that the impasse constituted a special circumstance justifying unilateral withdrawal from the multi-employer unit. Assuming, for the

purposes of this argument, that the decision of the Court accurately reflects applicable law, the Court nevertheless erred in failing to provide any effective remedy for the egregious unfair labor practices committed by the Association; in failing to consider the effect of the unfair labor practices in determining whether a genuine impasse had occurred which warranted withdrawal from the multi-employer unit; and in establishing principles which will inevitably destroy the integrity of multi-employer bargaining and the benefits which such bargaining was designed to effectuate.

Bargaining between unions and employers on a multi-employer basis is of long standing duration. It exists because it offers advantages to both labor and management, and is effective in creating the stability in labor relations which was one of the main objectives of the Labor-Management Relations Act. For the union there is a saving of time and money in negotiating a single contract instead of many; it also enables a union to achieve its goal of equalizing wages and working conditions of employees and employers in a common field. Furthermore many benefits that individual employers could not singly provide are achievable on a multi-employer basis. For employers the practice offers individual employers increased bargaining power in dealing with a union. In addition, employers in such a bargaining unit can have greater confidence that their competitors will not enjoy more advantageous terms. See generally, Comment, The Status Of Multi-Employer Bargaining Under

The National Labor Relations Act, 1967 Duke L. J. 558.

Of course, the public benefits of multi-employer bargaining are manifest. Such bargaining has led to greater stability in labor relations especially in industries where there are many small units which makes bargaining on a multi-employer basis so much more rational and effective in preventing labor strife. See N.L.R.B. v. Sheridan Creations, Inc., 357 F.2d 245 (CA 2 1966); N.L.R.B. v. Tulsa Sheet Metal Works, Inc., 367 F.2d 55 (CA 10 1966).

Multi-employer bargaining received official sanction in N.L.R.B. v. Teamsters Local 449 (Buffalo Linen), 353 U.S. 87 (1957). There are no statutory provisions providing for multi-employer bargaining. The Board derives its power to certify multi-employer units from 29 U.S.C. § 159 (b) which provides:

> "The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. . . ."

The Board reads this section in conjunction with 29 U.S.C. § 152 (2) which defines the term employer as including an "agent of an employer". The Board deems the multi-employer assoication to be the agent of each of its members, thus permitting it to exercise its power under Section 159(b) to certify an "employer" unit as appropriate

for bargaining. See Waterfront Employers Association of the Pacific Coast, 71 NLRB 80, 109 where the Board found an association to be an employer even prior to the 1947 Taft-Hartley Amendments to the Act. In the Buffalo Linen case, supra, this Court decided that Congressional refusal to interfere with multi-employer bargaining at the time of the Taft-Hartley Amendment debates, despite proposals to do so, demonstrated its recognition of multi-employer bargaining as a "vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining." 353 U.S. at 95.

The decision of the Court below could herald the demise of multi-employer bargaining. While finding that the Association and a number of individual employers committed serious unfair labor practices, the Court did not order any remedy to deal with the Association's refusal to bargain with Local 455. It refused to attribute the illegal practices of their agent, to the employers. If a multi-employer association can commit unfair labor practices with impunity, unions would be foolhardy at best to deal with employers on that basis. Indeed the Court's decision permits the employers to avoid reaching agreement with few untoward consequences. Unions will not long countenance such action, and the obvious consequence will be an avoidance, if not end, of this type of bargaining with all of its advantages and conceded benefit to labor peace and the public good.

There are no cases directly on point involving the right of employers to withdraw from a multi-employer unit after the association has committed unfair labor practices, but both the Board and the courts have long recognized that it would be anomalous to allow an employer's unfair labor practices to create or contribute to an impasse which might then justify bypassing the bargaining representative and permit the employer to take unilateral action.

In Industrial Union of Marine and Shipbuilding Workers v. N.L.R.B., 320 F.2d 615 (CA 3 1963), the employer contended that its unilateral alteration in the conditions of employment was not proscribed since at the time it instituted the changes a bargaining impasse had been reached. The Court rejected the argument noting:

> ". . . It is manifest that there can be no legally cognizable impasse, i.e., a deadlock in negotiations which justifies unilateral action, if a cause of the deadlock is the failure of one of the parties to bargain in good faith." 320 F.2d at 621.

See also, N.L.R.B. v. Herman Sausage Company, 275 F.2d 229, 234 (CA 5 1960).

Therefore even if an impasse existed, the Court erred in ignoring the fact that the unfair labor practices committed by the Association (and indeed of the individual Employers) created the impasse and in any event in failing to determine whether

those unfair labor practices required the imposition of effective remedial action.

It is well settled that an employer is responsible for the statements or acts of its agents N.L.R.B. v. LaSalle Steel Company, 178 F.2d 822 (CA 7 1949), cert. den'd. 340 U.S. 810 (1951); Joy Silk Mills, Inc. v. N.L.R.B., 185 F.2d 732 (CA D.C. 1950), cert. den'd. 341 U.S. 914 (1951). Under the law of agency a principal is responsible for the acts of the agent within the scope of the agent's general authority, even though the principal has not specifically authorized or has even forbidden the acts in question. International Longshoremen's and Warehousemen's Union, Local 6, 79 NLRB 1487 (1948).

In this case, for the first time, a contrary proposition has been established. The agent association is found guilty of unfair labor practices and is ordered to cease and desist from its illegal activity (a meaningless and futile gesture as the Employers have been permitted to withdraw therefrom and it is now nothing more than a shell) while the Employers, as principals, are not held responsible for the illegal acts of their authorized agent.

An employer association, which is the agent of the employers which bargain through it, is responsible for violations of law committed by it. Thus an employer association that had negotiated an illegal union security contract was held responsible together with the individual employer when a worker was denied a job under the contract. N.L.R.B. v. George D. Auchter Company, 209

F.2d 273 (CA 5 1954).

We are aware of no case in which the agent alone bears the burden while the employer is held free from fault. Here moreover, the situation is exacerbated in view of the fact that the Court sanctioned the Employers' withdrawal of authorization from the Association following the unlawful practices which renders the purported remedy, limited as it already is, meaningless as the Association is concededly no longer a viable entity.

It is of some significance in assessing the Court's conclusions in this area to contrast its findings as discussed above, with its findings with respect to the union's role as agent of the employees it represents.

The Board found, and the Court agreed, that the strikers were wrongfully discharged. Nevertheless the Court refused to enforce the Board's order requiring reinstatement of the employees. Here the Court found that the Union was the agent of the employees in making applications for reinstatement. Although the Union made such an unconditional application in a letter to each employer, as the Union had requested the employers to sign an Association contract with it in another communication, the Court assumed that the application made by the Union in the separate letter sent on behalf of the employees was conditional, and the employees who were wrongfully discharged were denied reinstatement and the right to be made whole.

In addition, the Court below failed

to consider the impact of this Court's decision in N.L.R.B. v. Gissel Packing Co., 395 U.S. 75 (1969) in determining an appropriate remedy for the Association's unfair labor practices. In the Gissel case the Court held that a bargaining order may issue without the necessity of an election not only in "'exceptional' cases marked by 'outrageous and pervasive' unfair labor practices", but also in "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine union strength and impede the election processes." 395 U.S. at 613, 614.

Both the Board and courts have found employer conduct similar to that engaged in here by the Association and various individual member employers to warrant a Gissel type bargaining order. See Oahu Refuse Collection Company, 212 NLRB No. 51 (1974); N.L.R.B. v. Hendel Mfg. Co., 483 F.2d 350 (CA 2 1973); Wallgreen Company v. N.L.R.B., 509 F.2d 1014 (CA 7 1975) (threats of reprisals concerning job securirty and threats of plant closure); Lawrence Rigging, Inc., 202 NLRB 1094 (1973); Harpeth Steel, Inc., 208 NLRB 545 (1974); N.L.R.B. v. Rollins Telecasting Co., Inc., 494 F.2d 80 (CA 2 1974) (unlawful support and assistance of a rival union or suggestions that employee committee be formed).

The Court below did not issue such an order here presumably because the Board did not make any findings that such an order was appropriate. The Board however did not have occasion to pass on this issue as it had found that the Association had unlawfully refused to bargain with Local 455

on other grounds. Therefore, at the very least, the Court should have enforced the bargaining order as an appropriate remedy in any event, in light of the pervasive unfair labor practices committed by both the Association and the individual employers.

The Court's failure to require those employers who gave notice of withdrawal but who did not sign an agreement with any union, to bargain with Local 455 on the ground that the latter never requested bargaining on an individual employer basis, is further evidence of its failure to consider the harmful effects its decision will have on multi-employer bargaining. Its ruling can only lead to a drastic diminishment of the effectiveness of such bargaining, inasmuch as it permits an employer to be free of any bargaining obligation if an impasse occurs which will have the foreseeable effect of encouraging impasses in negotiations. It also puts the Union in an untenable situation. The Union, if it requests employers to bargain on an individual basis, has to assume, at the very least, that an impasse has occurred or it will have committed an unfair labor practice itself. Morand Bros. Beverage Co., 91 NLRB 409 (1950), enforced, 190 F.2d 576 (CA 7 1951). For the Union to request individual bargaining also places upon the Union the onus of destroying the multi-employer unit.

In this case the Union assumed, and the Board found, that all the employers were obliged to bargain through the Association. It never agreed to release any

employer. All of the employers were obviously aware of the union's desire to bargain. Hence the Court improperly released these employers from any bargaining obligation.

Since the Association, as agent for its members, committed serious unfair labor practices, as did a number of individual employers, to allow some of the employers to escape without any bargaining obligation and thereby deprive their employees of a bargaining representative solely on the basis of the failure to request individual bargaining is surely to exalt form over substance. The Court's decision ignores the many cases which have held that a request to bargain is not necessary under certain circumstances. (See infra, p. 21).

The Court did require those employers who signed with Local 810 after giving notice of withdrawal, to bargain with Local 455 unless they could show actual loss of majority status or a rational basis for doubting Local 455's majority status. The reasoning of the Court is that since these employers intended to sign with some union, they were under a duty to bargain with Local 455 on an individual basis before negotiating with any other union.

In any event it is well settled that a request to bargain is superfluous where a bargaining order is designed to remedy unfair labor practices other than a refusal to bargain. See N.L.R.B. v. Gissel Packing Company, supra; Steelworkers v. N.L.R.B. (Northwest Engineering Company), 376 F.2d 770 (CA D.C. 1967), cert. den'd. 389 U.S.

932 (1967); American Sanitary Products Company v. N.L.R.B., 382 F.2d 52 (CA 10 1967); Bryant Chucking Grinder Company, 160 NLRB 1526 (1966). Cf. Wausa Used Steel Corp., v. N.L.R.B., 377 F.2d 369 (CA 7 1967).

Recently the Board held in Beasley Energy, Inc., 228 NLRB No. 16, 94 LRRM 1563 (1977), that a Gissel bargaining order is appropriate even though the union which had a card majority did not make a bargaining demand. The employer was ordered to bargain from the date it initiated the unlawful conduct which prevented the holding of a fair election.

Neither the employees of the employers in group three nor the employers themselves filed a petition for decertification or for an election. Cf. Linden Lumber Division, Summer & Co. v. N.L.R.B., 419 U.S. 301 (1974). The class three employers should at the very least be required to prove that Local 455 did not represent a majority or that the employers had a good faith doubt of the Union's majority status. As the Court in N.L.R.B v. Tahoe Nugget, Inc., 99 LRRM 2509, 2517 (CA 9 1978)(not officially reported) succinctly noted:

> "If an employer could routinely negate the presumption of union majority status by withdrawing from a bargaining association, unions might refuse to consent to multiple party bargaining and this effective device for promoting industrywide peace would be lost."

The presumption of majority status is clearly applicable in this case. The Board recognized this in Sahara-Tahoe Corp., 229 NLRB No. 151, 96 LRRM 1583, enforcement granted 99 LRRM 2837 (CA 9 1978) when it stated:

> "It is well settled that the existence of a prior contract, lawful on its face, raises a dual presumption of majority - a presumption that the union was the majority representative at the time the contract was executed, and the presumption that its majority continued at least through the life of the contract. Following the expiration of the contract, the presumption continues and, though rebuttable, the burden of rebutting it rests on the party who would do so."

II. WHETHER AN INDIVIDUAL EMPLOYER MAY UNILATERALLY WITHDRAW FROM A MULTI-EMPLOYER BARGAINING UNIT AFTER THE COMMENCEMENT OF NEGOTIATIONS UPON THE OCCURRENCE OF AN IMPASSE PRESENTS AN IMPORTANT QUESTION OF LAW WHICH HAS NOT HERETOFORE BEEN PASSED UPON BY THIS COURT.

In Point I we proceeded upon the assumption that an employer could lawfully withdraw from a multi-employer association

if an impasse in negotiations occurred. However that question has never been decided by this Court (cf. N.L.R.B. v. Teamsters Local 449 [Buffalo Lines], 353 U.S. 87, 94 n. 22 (1957) and the Court below and the Board are in disagreement over the effect of an impasse on the right to withdraw from the multi-employer unit.

The position of the Court that withdrawals are permissible whenever impasse is reached in bargaining creates serious problems in the multi-employer situation. Impasse as a standard for withdrawal will inevitably lead to confusion as to the rights of all the parties as there is no set formula for determining when a genuine impasse has occurred (witness the disagreement between the Board and the Court in this case). A wrong determination can lead to dire consequences as the striking employees in this case discovered.

For the above reason among others, the Board had held that to permit withdrawal whenever an impasse is reached "would effectively negate the benefits of [multi-employer] bargaining to all parties and to employees. . . ." Hi-Way Billboards, Inc., 206 NLRB 22, 23 (1973), enforcement denied 500 F.2d 181 (CA 5 1974). The Board's reasoning was that a genuine impasse was not the end of collective bargaining but a not unusual phase in negotiations during which the parties could resort to economic pressure to break the stalemate.

The Court's decision ignores the fact that an impasse can often only be avoided or broken by a willingness to

compromise. Such compromises will be discouraged if employers can use an impasse as an event that permits them to delay or, as the Court ruled with respect to the class three employers, to avoid reaching an agreement altogether.

Thus the Board ruled that an impasse is not an "unusual circumstance" which would permit a unilateral withdrawal from multi-employer negotiations. To decide otherwise "would allow an employer to seize upon such an occurrence and use it as a ground for withdrawal merely because it was dissatisfied with the impending agreement. . . ." Hi-Way Billboards, Inc., 206 NLRB at 23, 24.

As the Board and the Court differ on this important question which affects bargaining in many prominent areas of industry and which has a significant impact on commerce, this Court should grant certiorari to resolve this issue.

CONCLUSION

For the foregoing reasons a Writ of Certiorari should issue.

Respectfully submitted,

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TABLE OF CONTENTS

Judgment

(ORIGINAL)

UNITED STATES COURT OF APPEALS

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Petitioner,

—and—

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

Intervenor,

—v.—

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.; ACHILLES CONSTRUCTION CO., INC.; GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.; HEUSER IRON WORKS, INC.; IKENSON IRON WORKS, INC.; KUNO STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS CO.; MASTER IRON CRAFT CORP.; MELTO METAL PRODUCTS CO., INC.; MOHAWK STEEL FABRICATORS, INC.; THE PEELE COMPANY; ROMAN IRON WORKS, INC.; SPIGNER AND SONS STRUCTURAL STEEL CO., INC.; S. CERVENKA AND SONS, INC.; PAXTON METALCRAFT CORP., DIVISION OF APEX INDUSTRIES, INC.; KOENIG IRON WORKS, INC.; TROJAN STEEL CORP.; G. ZAFFINO AND SONS, INC.; ROMA IRON WORKS, INC.; and SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

Respondents.

—and—

LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Intervenor.

Before: FRIENDLY, GURFEIN and MESKILL, Circuit Judges.

Judgment

THIS CAUSE came on to be heard upon the application of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondents, Independent Association of Steel Fabricators, Inc., New York, New York, and its Employer-Members (listed in the caption hereof), their officers, agents, successors, and assigns, and Respondent Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, New York, New York, its officers, agents, and representative on August 11, 1977. The Court heard argument of respective counsel on April 10, 1978, and has considered the briefs and transcripts of record filed in this cause. On June 30, 1978, the Court, being fully advised in the premises handed down its opinon granting in part and denying in part enforcement of the Board's said order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that:

A. Respondent-Association its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) In any manner assisting, instructing or otherwise encouraging its employer-members to interfere with, restrain or coerce their employees in the exercise of the employees' rights under the National Labor Relations Act by supporting or assisting Local 810, or any other labor organization, in derogation of an existing valid bargaining relationship with another labor organization.

(b) In any other manner assisting or contributing financial or other support to Local 810, or any other labor organization.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Section of the Act.

Judgment

2. Respondents Greenpoint Ornamental and Structural Iron Works, Inc., Long Island Steel Products Co., Inc., Mohawk Steel Fabricators, Inc., Paxton Metalcraft, Corp., Melto Metal Products, Co., and Roman Iron Works, Inc., their officers, agents, successors and assigns shall cease and desist from:

(a) Recognizing Local 810 as the bargaining representative of any of their production and maintenance employees, unless and until said labor organizations shall have been certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Giving effect to their collective-bargaining agreements with Local 810, or to any modification extension supplemental renewal thereof, or to any superseding contracts wtih Local 810, unless and until said organization shall have been certified by the National Labor Relations Board.

3. Respondent Long Island Steel Products Co., Inc., shall cease and desist from:

(a) Urging or soliciting its employees to join Local 810 or to abandon Local 455.

(b) Threatening to close its business unless its employees abandon Local 455 or join Local 810.

(c) Informing its employees that it will never sign a contract with Local 455.

(d) Threatening its employees with discharge and other reprisals in order to induce them to support or join Local 810 or to abandon Local 455.

(e) Threatening its employees with discharge and other reprisals in order to induce them to support or join Local 810 or to abandon Local 455.

(f) Urging or encouraging its employees to go to the offices of Local 810, offering to transport them to said

offices, transporting them to Local 810 offices, or participating or remaining present at Local 810's offices as their employees are asked to join or support Local 810 by an agent of Local 810.

4. Respondent Greenpoint Ornamental Iron Works, Inc., shall cease and desist therefrom:

(a) Warning or directing its employees to refrain from becoming or remaining members of Local 455 or to refrain from giving any assistance or support to Local 455.

(b) Threatening its employees with discharge or other reprisals if they become or remain members of Local 455 or if they give any assistance or support to Local 455.

(c) Warning or advising its employees or employees of other Employers engaged in commerce that it would never sign a contract with Local 455 or that it would close its plant before signing a contract with Local 455.

(d) Urging or encouraging its employees to go to Local 810's offices or offering to transport the said employees to Local 810's offices.

(e) Urging or soliciting its employees to join Local 810 or threatening them with discharge if they did not do so.

(f) Promising its employees improvements in their working conditions to induce them to abandon Local 455 and to join and support Local 810.

5. Respondent Roma Iron Works, Inc., shall cease and desist from:

(a) Threatening its employees with discharge and plant closure if its employees continued to support or assist Local 455.

(b) Informing its employees that it intended to sign a contract with Local 810, and would never sign a contract with Local 455.

(c) Informing its employees that it wanted another union because of the strike called by Local 455 or encouraging its employees to join Local 810.

(d) Requesting its employees to accompany it to the offices of Local 810, and accompanying them to Local 810's offices or remaining present as its employees are asked to support or join Local 810 by an agent of Local 810.

6. Respondent Paxton Metalcraft Corp., shall cease and desist from:

(a) Urging or encouraging its employees to support Local 810 or to abandon Local 455.

(b) Informing its employees it signed a contract with Local 810 or that it will not deal with, recognize, bargain or sign a contract with Local 455.

7. Respondent Trojan Steel Corp., shall cease and desist from:

(a) Threatening its employees with discharge unless they abandon Local 455.

(b) Informing its employees it would never sign a contract with Local 455.

8. Respondent G. Zaffino and Sons, Inc., shall cease and desist from:

(a) Offering to transport its employees to the offices of Local 810, transporting employees to the office of Local 810 or remaining present or participating when its employees were asked to join or support Local 810 by agents of Local 810.

(b) Threatening its employees with plant closure and other reprisals unless they abandon Local 455 and join or support Local 810.

(c) Urging or encouraging its employees to support or join Local 810 or to abandon Local 455.

B. The Respondent-Association and the named Respondent-Employers shall take the following affirmative action necessary to effectuate the policies of the Act:

1. Respondents Greenpoint Ornamental and Structural Iron Works, Inc., Long Island Steel Products Co., Inc., Mohawk Steel Fabricators, Inc., Paxton Metalcraft Corp., Melto Metal Products Co., Inc. and Roman Iron Works, Inc., shall reimburse all present and former employees for all moneys unlawfully extracted from the said employees for initiation fees, dues, and assessments under their respective contracts with Local 810, together with interest thereon at the rate of 6 percent per annum.

2. The Respondent-Association, Greenpoint Ornamental and Structural Iron Works, Inc., Long Island Steel Products Co., Inc., Mohawk Steel Fabricators, Inc., Paxton Metalcraft Corp., Melto Metal Products Co., Roman Iron Works, Inc., Roma Iron Works, Inc., Trojan Steel Corp., and G. Zaffino and Sons, Inc. shall post at their places of business and plants located at various places in New York City, and its environs, at places where notices to members or employees, as the case may be, are customarily posted, copies of the applicable notices attached hereto. In addition to posting in its places of business, the Respondent-Association shall mail a copy of its notice to each employer who was a member of the Association during October or November 1974, and to each employee of such employers. Copies of said notices, on forms provided by the Regional Director for Region 29, after being duly signed by the various Respondents'

representatives, shall be posted, or mailed, by the respective Respondents immediately upon receipt thereof, and those posted shall be retained by them for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees or members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said materials are not altered, defaced, or covered by any other material.

3. Respondent-Association and each Respondent-Employer shall separately notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps each Respondent has taken to comply herewith.

It is further ordered that the complaint herein against the Respondent-Association and the individual Respondent-Employers shall be, and it hereby is, dismissed insofar as it alleges violations of the Act not found.

/s/ MURRAY I. GURFEIN
Judge, United States Court of Appeals for the Second Circuit

/s/ THOMAS J. MESKILL
Judge, United States Court of Appeals for the Second Circuit

FILED: September 6, 1978

Opinion of Gurfein

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 850—September Term, 1977.

(Argued April 10, 1978 Decided June 30, 1978.)

Docket No. 77-4198

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

and

SHOPMEN'S LOCAL UNION No. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

Intervenor,

—against—

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.; ACHILLES CONSTRUCTION CO., INC.; GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.; HEUSER IRON WORKS, INC.; IKENSON WORKS, INC.; KUNO STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS CO.; MASTER IRON CRAFT CORP.; MELTO METAL PRODUCTS CO., INC.; MOHAWK STEEL FABRICATORS, INC.; THE PEELE COMPANY; ROMAN IRON WORKS, INC.; SPIGNER AND SONS STRUCTURAL STEEL CO., INC.; S. CERVENKA AND SONS, INC.; PAXTON METALCRAFT CORP.; DIVISION OF APEX INDUSTRIES, INC.; KOENIG IRON WORKS, INC.; TROJAN STEEL CORP.; G. ZAFFINO AND SONS, INC.; ROMA IRON WORKS, INC.,

Respondents,

and

LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Intervenor,

Before:

FRIENDLY, GURFEIN and MESKILL,

Circuit Judges.

Opinion of Gurfein

Application for enforcement of an order against a multi-employer bargaining association and certain of its members arising out of a strike by production and maintenance employees represented by Local 455, AFL-CIO.

The Court of Appeals held: (1) substantial evidence supported the finding that the Association and certain named respondents committed unfair labor practices by attempting to assist Local 810, IBT, to supplant Local 455 as the bargaining representative of their employees; (2) the Board's finding that no impasse existed when a majority of members unilaterally withdrew from the Association was unsupported by the record; (3) certain employers, by executing contracts with Local 810 before giving notice of withdrawal from the Association, were guilty of a refusal to bargain; (4) employers who lawfully withdrew were nevertheless presumptively obligated to negotiate with Local 455 but may rebut the presumption by introducing evidence of a good-faith doubt as to Local 455's majority status; and (5) the Board was without power to hold those employers constituting a majority of the Association who had withdrawn bargaining authorization to be bound by an agreement negotiated by a remaining minority.

Enforcement granted in part, denied in part.

STANDAU E. WEINBRECHT, National Labor Relations Board, Washington, D.C. (John S. Irving, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Carl L. Taylor, Associate General Counsel, Elliott Moore, Deputy Associate General Counsel, National Labor Relations Board, Washington, D.C., of counsel), *for Petitioner.*

STANLEY ISRAEL, New York, N.Y. (Bluestone, Kliegman & Israel, New York, N.Y., of counsel), *for Respondents except Heuser Iron Works, Spigner & Sons, and Local 455.*

BELLE HARPER, New York, N.Y. (Sipser, Weinstock, Harper, Dorn & Leibowitz, New York, N.Y., of counsel), *for Intervenor Local 455.*

ROBERT M. ZISKIN, Great Neck, N.Y. (Mirkin, Barre, Saltzstein & Gordon, P.C., and Robert M. Saltzstein, Great Neck, N.Y., of counsel), *for Intervenor Local 810.*

GURFEIN, *Circuit Judge*:

The NLRB petitions for enforcement on an order issued against a multi-employer bargaining group, the Independent Association of Steel Fabricators, Inc. ("Association"), and eighteen of its employer members who are part of the steel fabricating and erecting industry in the metropolitan New York area. The board found that the Association and certain of the named members had committed unfair labor practices by unlawfully attempting to assist the Sheet Metal, Alloys and Hardware Fabricators and Warehousemen, Local 810, International Brotherhood of Teamsters ("Local 810") to supplant Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Workers, AFL-CIO ("Local 455") as representative of the members' production and maintenance employees. The Board found further that certain of the named members of the Association had violated the National Labor Relations Act by unilaterally withdrawing bargaining authorization from the Association during negotiations with Local 455 and by declining to execute an agreement negotiated by five members remaining in the Association. Certain respondents were also held to have unlawfully executed contracts with Local 810 at a time when they were obligated to bargain with Local 455.

THE HISTORY OF THE CONTROVERSY

Before 1975, some employers in the steel construction and fabrication industry in metropolitan New York whose employees were represented by Local 455 had bargained with that union as members of a multi-employer association, Allied Building Metal Industries, Inc. ("Allied").[1] Other employers, including all of respondents here involved, had negotiated individual independent contracts with Local 455. Although the wage and employee benefit funds contribution provisions were essentially the same for all industry employers,[2] a number of differences between the independent standard contract and the Allied contract had evolved over the course of successive negotiations. When the existing contracts expired on July 1, 1975, there were some fifty-six differences between the individual contracts and the Allied contract concerning

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[1] Local 455 also represented employees of various New York manufacturers of metal and wire products who bargained through the Wire Works Manufacturers Association. In a companion case to this one, the NLRB petitions for enforcement of its order against one member of that Association, Acme Wire Works, Inc., based on Acme's refusal to execute a contract negotiated between Local 455 and the Wire Works Manufacturers Association, *N.L.R.B. v. Acme Wire Works, Inc.*, Dkt. No. 77-4149 (2d Cir. June 30, 1978). In an opinion filed herewith, we grant enforcement.

[2] In negotiating with the independents, the union had prepared stipulations proposing changes in the previous standard independent contract. Usually the stipulations submitted to the independents had specified the wages and benefits for the first year of the contract and had provided that wage and benefit provisions for the second and third years would match those negotiated with Allied. The Allied settlement had also governed the amounts that the independent employers would contribute to jointly administered health, welfare, pension and fringe benefit funds.

matters such as overtime pay and contract coverage of plant clericals, almost all of which worked to the advantage o the Allied members who were in competition with the independents.

In early 1975, before the individual contracts expired, these fifty-odd disparities, coupled with the depressed state of the construction industry, impelled twenty-five employers having standard independent contracts with Local 455 to form a trade association, the Independent Association of Steel Fabricators. One of the Association's primary functions was to negotiate with Local 455 and other unions, with the ultimate objective of achieving parity with Allied members. On June 10, the Association furnished Local 455 with bargaining authorization from thirty-two employers and the union subsequently recognized the new Association as bargaining agent for all but four of those employers.[3]

Bargaining between Local 455 and the Association occurred in three phases: (1) four sessions between June 10 and July 1, the date the contracts expired and union employees went on strike; (2) four or five sessions between late August and early October; and (3) a single meeting on January 14, 1976. There was a hiatus in negotiations between July 1 and late August and again between October and mid-January.

In the four bargaining sessions in June, discussion focused on the Association's interest in eliminating the

[3] Local 455 objected to the inclusion of Balfour and Company, Esco Iron, Penner Company and Weatherguard Services on grounds that it had already commenced negotiations with those companies on an individual basis. Balfour, Esco and Penner subsequently signed standard independent contracts with Local 455; Weatherguard went out of business or was absorbed by another company having a contract with Local 455.

fifty-six disparities between the individual contracts and the Allied contract. The union failed to present any specific wage or fund contribution proposals until the final June 30 meeting. At that meeting, Local 455 President Colavito advised the Association that the union was seeking a 15% wage increase and 5% fund increase from Allied but did not address the fifty-six disparities. The Association countered with a draft contract based on the previous Allied contract which eliminated the disparities mentioned and included a wage increase. Colavito rejected the proposed draft as totally unacceptable.

On the next day, July 1, 1975, Local 455 struck all employers who had not signed new contracts. At the same time, it circulated a proposed stipulation reducing its requested wage increase from 15 to 10% and modifying certain other demands. On the basis of that proposal, the union negotiatetd settlements with certain independent non-affiliated employers and one Association member, Dextra, during the summer of 1975. There were no further meetings between the Association and the union until late August.

During the hiatus in negotiations, the Association learned that one of its members, Dextra, had consummated a collective bargaining agreement with Local 455. Upon the ground that the By-Laws of the Association required six months advance notice of a member's resignation, the Association petitioned the New York Supreme Court for a temporary injunction to prevent Dextra's resignation and its entry into an inividual collective bargaining agreement with the union. In addition, the Association filed an unfair labor practice charge with the Board, alleging an intent on the part of Local 455 to destroy the multi-employer bargaining unit in violation of §§ 8(b)(3) and 8(b)(1)(B) of the Act, 29 U.S.C. §§ 158(b)(3), 158(b)(1)(B). The state court declined to grant preliminary relief and the NLRB Region 2

Director issued a no-action letter dated November 21, 1975, in which he stated that, as of June 30, 1975, "a legitimate impasse was reached" and that therefore Dextra was entitled to negotiate with the union on an individual basis.[4]

Local 455 and the Association met once in late August and sporadically in September and October under the auspices of the State Mediation Service. At the late August negotiating session, Local 455 formally presented the Association with its July proposal, which it had also presented to Allied. Since the union had made no concessions over the course of the negotiations from August through October concerning the fifty-six disparities, the parties made little progress. Several members of the Association, Atwater, North Shore, and Charla Iron Works, withdrew during this period with the consent of Local 455.[5]

In October, the Association's labor relations adviser Brickman indicated at an open meeting of the Association that there might be other unions interested in representing its members' employees. Under circumstances to be discussed more fully below, Local 810 of the Teamsters contacted certain respondents and their employees and,

[4] Respondents' Exhibit 8.

[5] The union expressly acquiesced in the withdrawals by Dextra in August and Atwater in October or November but filed charges protesting the withdrawals by Charla and North Shore Fabricators. The Regional Director declined to issue a complaint in either case on finding that the union had agreed to negotiate with Charla on a separate basis after its withdrawal in August and to negotiate with North Shore after its withdrawal in September. Local 455's determination to file charges after having initially agreed to bargain separately is perhaps explained by the fact that Local 819, IBT, filed petitions requesting elections among Charla's and North Shore's production and maintenance employees shortly after those two companies had withdrawn from the Association.

between November of 1975 and February of 1976, nine members of the Association signed collective bargaining agreements with Local 810.[6]

Local 455 finally reached a settlement with Allied in early January 1976. Thereafter, on January 14, Local 455 met with the Association's negotiating committee and offered it the same basic wage and fund settlement that had been reached with Allied, but with the other provisions of the former standard independent contract remaining intact. Again there was no offer by Local 455 to eliminate the disparities. The Association countered with an offer to recommend to its membership the precise contract negotiated with Allied. Colavito categorically refused and the meeting ended.

Two days later, on January 16, the Association wrote to the union that nineteen of its members had withdrawn bargaining authorization from the Association.[7] The union

[6] These employers were: Roman Iron Works (November 18); Greenpoint Ornamental (November 20); Paxton Metalcraft (December 5); Melto Metal Products (December 22); Long Island Steel (January 6); Mohawk Steel (January 9); Master Iron Craft (January 28); Koenig Iron Works (January 30); Cervenka and Sons (February 17).

[7] The employers listed were Achilles Construction, Bay Iron, Esco Iron, Greenpoint Ornamental, Heuser Iron, Ikenson Iron, Koenig Iron, Kuno Steel, Long Island Steel, Master Iron Craft, Melto Metal, Mohawk Steel, Paxton Metalcraft, Peele Company, Roman Iron Works, Spigner and Sons, Trojan Steel, Weatherguard Service, and Zaffino and Sons. Two of these employers, Esco Iron and Weatherguard Service, were not made respondents in this proceeding because Local 455 had never considered them part of the Association; *see* note 3 *supra*. Bay Iron was also not made a party. In addition to the other sixteen withdrawing employers, two members of the Association, who did not sign the January 16 letter are named as respondents herein, Cervenka and Sons which signed a contract with Local 810 in February of 1976, and Roma Iron Works which signed with neither Local 810 nor Local 455 but which allegedly rendered unlawful assistance to Local 810.

received the letter on January 19. By letter dated January 20, Colavito informed the Association that the union did not consent to the withdrawals. He insisted further that any agrement worked out between the union and the Association would be binding on the withdrawing members. By the time the union was notified of the withdrawals through the January 16 letter, six member employers had already signed agreements with Local 810.

Several days later, on January 23, the union met at the State Mediation Board with three employers who had not withdrawn. They made it clear to the union negotiator that they were not authorized to speak on behalf of the Association. Colavito responded that, as far as he was concerned, the members present did represent the Association. After all-day negotiations, the parties reached agreement on a general stipulation but deferred signature pending resolution of certain problems unique to particular employers. At two meetings in late January, five employers signed the January 23 stipulation. Although they refused to sign *on behalf* of the Association, they added to their signatures, at Colavito's insistence, that they were members of the Association.

During the next two months, while the strike continued against non-signatories, Local 455 sent two sets of letters to the employers who had withdrawn from the Association, one requesting them to implement the agreement represented by the January 23 stipulation and another requesting reinstatement of the striking employees. Of the nineteen employers who had withdrawn, two, Trojan Steel and Heuser Iron, did execute agreements identical to the January 23 stipulation and reinstated their employees. The seventeen other employers who had withdrawn by letter received January 19 fall into three classes: (1) those who had signed with Local 810 before

January 19; (2) those who signed with Local 810 only after the January 19 notice; and (3) those who signed with neither Local 455 nor Local 810.[8]

THE BOARD'S FINDINGS

The preceding facts give rise to four separate charges of unfair labor practices by Local 455 against the respondent Association and the named employers, as well as a charge filed by Local 810 against Local 455 alleging various acts of violence and unlawful coercion. The four charges, consolidated into a single amended complaint, were heard together with the Local 810 counter-charge before an Administrative Law Judge. His principal findings of fact and conclusions of law were adopted by the Board in a decision dated August 11, 1977.[9] They were essentially as follows:

> (1) By soliciting their employees to abandon Local 455 and join Local 810, certain respondent employers and the respondent Association had engaged in unfair labor practices within the meaning of §§ 8(a)(1), (2), and (5) of the Act;[10]

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[8] The employers falling into each category are listed in notes 27-29 *infra*.

[9] The Board's decision is reported at 231 N.L.R.B. No. 31. In adopting the decision of the Administrative Law Judge, the Board noted that it did not rely on the Administrative Law Judge's conclusion that withdrawal of authorization to bargain of itself constituted a violation of § 8(a)(5) of the Act. Rather, the Board took the position that untimely withdrawal followed by the employer's refusal to acquiesce in the union's demand that bargaining continue in the multi-employer unit together formed the basis for a § 8(a)(5) refusal to bargain. The Board also disapproved the Administrative Law Judge's intimation that the unfair labor practices of the Association and its members contributed to the finding of untimely withdrawal. The Board concluded that withdrawal would have been untimely and ineffective even if there had been no unfair labor practices.

[10] These employers were: Greenpoint, Paxton, Long Island, Master, Roma, Zaffino, and Trojan.

(2) By threatening to close their plants and/or discharge their employees in order to induce them to join Local 810, certain respondent employers had violated § 8(a)(1) of the Act;[11]

(3) By withdrawing from multi-employer bargaining and by refusing to acquiesce in the union's demand that they execute the January 23 agreement, the Association and respondents (except for Trojan and Heuser) violated and were violating §§ 8(a)(5) and (1) of the Act;

(4) By discharging their employees for supporting Local 455 and refusing to reinstate them upon their unconditional offer to return to work, respondent employers (except for Trojan and Heuser) had violated and were violating §§ 8(a)(3) and (1) of the Act.

As to the counter-charge, the Administrative Law Judge found:

> By blocking ingress to respondent employer's plant, threatening to inflict physical harm on respondent's employees, and coercively photographing employees as they crossed Local 455 picket lines, Local 455 had violated and was violating § 8(b)(1)(A) of the Act.[12]

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[11] These employers were: Greenpoint, Roma, Trojan, Long Island, and Zaffino.

[12] Section 8(b)(1)(A), 29 U.S.C. § 158(b) provides that:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title...."

The Board does not seek enforcement of that portion if its order issued against Local 455 since the union has voluntarily complied with its provisions.

THE ORDER OF THE BOARD

In ordering the employers to cease and desist from the above unfair labor practices, the Board ordered *inter alia* that: (1) all members (except Trojan and Heuser) must implement the January 23 collective bargaining agreement and reinstate all striking employees; (2) all employers (except Roma Iron Works and Cervenka and Sons) must cease withholding authorization from the Association to bargain collectively and to execute an agreement on their behalf with Local 455; (3) all employers who had negotiated collective bargaining agreements with Local 810 must cease recognition of Local 810 as the bargaining representative of their production and maintenance employees and must cease giving effect to the collective bargaining agreement with Local 810 or any renewal thereof, unless and until Local 810 has been certified by the Board as the exclusive bargaining agent of their employees.

I

ASSISTANCE TO LOCAL 810

A. *Individual Employer Assistance to Local 810 as a Violation of Sections 8(a)(1) and (2)*

Section 8(a), 29 U.S.C. § 158(a), of the NLRA provides:

> "(a) It shall be an unfair labor practice for an employer—
>
> "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;
>
> "(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. . . ."

The Board found that seven respondent employers:[13] (1) Long Island, (2) Greenpoint, (3) Roma, (4) Paxton, (5) Tropan, (6) Zaffino and (7) Master, had solicited their employees to join Local 810 in violation of §§ 8(a)(1) and (2) of the Act.[14] Except as to Master, we believe that the Board's findings are supported by substantial evidence on the record as a whole, and we accept them accordingly. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 491 (1951).

Indeed, these respondents (except for Master) do not seriously challenge the finding that they rendered assistance and support to Local 810 of the Teamsters. The record establishes that the presidents of Paxton, Long Island and Zaffino expressly requested their employees to join Local 810. Greenpoint president Geuther promised one employee a 10% wage increase if he would change unions, and reassured two others that their pension rights would travel with them if they joined Local 810. The employees of Roma and Zaffino were similarly advised that they would not lose any benefits by joining the Teamsters. Beyond that, the presidents of Roma and Zaffino personally drove some of their employees to Local 810 headquarters

[13] Although in paragraph 7 of his conclusions of law the Administrative Law Judge listed Cervenka and Sons as one of the employers who had solicited his employees to join Local 810, he made no findings of acts of solicitation or support by Cervenka. Nor did he make Cervenka the subject of "cease and desist" provisions concerning support of Local 810 as he did with the other named employers. Accordingly, we do not consider Cervenka and Sons as having rendered assistance to Local 810 in violation of §§ 8(a)(1) and (2).

[14] The Board also found that these respondents violated § 8(a)(5) of the Act. We reserve our discussion of those alleged violations for Part III of the opinion.

and the presidents of Greenpoint and Long Island offered to do so.[15]

These overt attempts to induce employees to abandon Local 455 and join Local 810 plainly constitute interference and support within the meaning of §§ 8(a)(1) and (2). *See International Ass'n of Machinists* v. *N.L.R.B.*, 311 U.S. 72, 78-79 (1940); *N.L.R.B.* v. *Triumph Curing Center*, Dkt. No. 76-2884, slip op. at 13 (9th Cir. March 2, 1978); *N.L.R.B.* v. *Park Edge Sheridan Meats, Inc.*, 323 F.2d 956, 958-59 (2d Cir. 1963).

It is also a violation of §§ 8(a)(1) for an employer to threaten economic reprisal in order to influence its employee's choice of a bargaining representative. Although an employer may indicate what it reasonably believes will be the likely consequences of selecting a particular union if the consequences predicted are beyond its control, it may not threaten to take economic measures on his own volition in retaliation for its employees' selection, *N.L.R.B.* v. *Gissell Packing Co.*, 395 U.S. 575, 618-19 (1969); *N.L.R.B.* v. *River Togs, Inc.*, 382 F.2d 198, 202 (2d Cir. 1967), or seek to divert employees from the recognized union to another, *Irving Air Chute Co.* v. *N.L.R.B.*, 350 F.2d 176, 179-81 (2d Cir. 1965). Here there was ample factual support for the Board's finding that certain em-

[15] Respondent Zaffino argues that the Administrative Law Judge erred in finding that it was president Zaffino rather than one of his employees who suggested that the employees accompany him to Local 810 headquarters. It is unnecessary to determine at whose initiative the ride occurred since there was testimony that on other occasions Zaffino had offered to take employees to Local 810 headquarters.

ployers made coercive statements concerning events within their control.[16]

With respect to Master, however, we do not find substantial evidence on the record as a whole to support the Board's finding of unfair labor practices. The only evidence concerning Master's alleged violations of §§ 8(a)(1) and (2) was testimony by a single employee that in mid-February of 1976, while on strike, he had asked for work and was informed that Master had signed with Local 810. There was no evidence suggesting that Master had engaged in conduct designed to assist Local 810 before it withdrew from multi-employer bargaining. For the reasons discussed in Parts II and III *infra*, we cannot conclude on this record that it was an unfair labor practice for Master to have signed with Local 810 after January 19 and to have related that fact to its employee.

B. *Association Assistance to Local 810 as a Violation of Sections 8(a)(1) and (2), and (5).*

At an open meeting of the Association in October of 1975, the Association's labor relations adviser, attorney Herman Brickman, suggested that unions other than Local 455 might be interested in representing the members' employees. Brickman was at that time the arbitrator in certain contracts between Local 810 and various industry

[16] The presidents of Greenpoint and Trojan told employees that they would not work so long as they remained members of Local 455 or refused to join Local 810. Employees of Trojan, Roma and Long Island were informed that their employers would never sign with Local 455. The presidents of Long Island, Roma and Zaffino indicated that they might close their plants if their employees remainded with Local 455.

employers. In response to Brickman's suggestion, the membership authorized him to contact other unions. At subsequent open meetings, Brickman reported that Local 810 was in the process of contacting the members' production and maintenance employees.

In November, the Association invited Dennis Silverman, president of Local 810, to address an open meeting of the membership and other industry employers. Silverman focused on the advantages Local 810 could offer both the employers and employees with respect to pensions, hospitalization and employment conditions. At about the same time, two members of the Association's negotiating committee obtained from Local 810 headquarters a copy of one of its labor contracts. After copies of the Local 810 contract somehow became available to the Association members, one of the negotiators commented on the substance of certain Local 810 provisions to interested employers.

The Board found that such activity by the Association constituted unlawful assistance to a non-incumbent union in violation of §§ 8(a)(1), (2) and (5) of the Act.[17] Respondents' only serious challenge to this finding is that the Administrative Law Judge erred in admitting and relying on allegedly privileged statements by Brickman to the Association. The Administrative Law Judge ruled that Brickman's statements were not protected by the attorney-client privilege because they were made at a

[17] Section 8(a)(5), 29 U.S.C. § 158(a) of the Act provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees. . . ."

meeting attended by non-members of the Association.[18] Relying on *United States* v. *Bigos*, 459 F.2d 639 (1st Cir.), *cert. denied sub nom. Raimondi* v. *United States*, 409 U.S. 847 (1972), respondents contend that the presence of non-clients at the Association meetings would vitiate the privilege only if that presence were indicative of an intent that the communication not be confidential. Such an intent, they submit, is absent here. Although we question whether statements made at an open meeting attended by non-member employers could reasonably have been intended as confidential, we conclude that there was sufficient other evidence of unlawful assistance apart from Brickman's statements to sustain the § 8(a)(1) violation. By inviting the president of a non-incumbent union to address the Association and by commenting on that union's contract provisions, the Association's agents plainly gave support to a labor organization in violation of § 8(a)(2) and in derogation of an existing bargaining relationship protected by §§ 8(a)(1) and (5). *See N.L.R.B.* v. *Getlan Iron Works, Inc.*, 377 F.2d 894, 896 (2d Cir. 1967); *N.L.R.B.* v. *Fotochrome, Inc.*, 343 F.2d 631, 632-33 (2d Cir.), *cert. denied*, 382 U.S. 833 (1965).

[18] Alternatively, the Administrative Law Judge concluded that since the statements referred to an ongoing illegality, the privilege did not attach. In respondents' view, Brickman's statements fell short of counseling illicit activities and hence did not fall within the common-law exception to the attorney-client privilege. Since, as we note in the text, there is sufficient other evidence of the Association's support of Local 810, we find it unnecessary to determine whether Brickman's statements forfeited their privileged status because they contemplated the commission of unfair labor practices. *Cf. Matter of Doe*, 551 F.2d 899, 900-01 (2d Cir. 1977); *United States* v. *Bob*, 106 F.2d 37 (2d Cir.), *cert. denied*, 308 U.S. 589 (1939).

II

Withdrawal From the Association—Impasse

The rule in this circuit is that once negotiations have begun, a member's attempt to withdraw from a multi-employers bargaining unit is "untimely and therefore ineffectual to relieve him from the obligations of any agreement that is ultimately reached, absent special circumstances or consent by the union." *N.L.R.B.* v. *John J. Corbett Press*, 410 F.2d 673, 675 (2d Cir. 1968). *Accord N.L.R.B.* v. *Sheridan Creations, Inc.*, 357 F.2d 245 (2d Cir. 1966), *cert. denied*, 385 U.S. 1005 (1967).

The questions we face here are: (1) whether an impasse constitutes such a special circumstance as to justify unilateral withdrawal; (2) whether an impasse in negotiations in fact occurred; and (3) whether notice to the union of withdrawal is a prerequisite to its effectiveness.

In this circuit, we have never directly ruled on an actual impasse situation as it affects the withdrawal rights of a member of a multi-employer bargaining unit.[19] The policy considerations involved are easy to formulate but difficult to reconcile. The rule against untimely withdrawal is designed to preserve the stability of multi-employer bargaining which would be impaired if an employer could withdraw whenever it found the results of such bargaining uncongenial or if it felt that it could use the threat of withdrawal as bargaining leverage. *See N.L.R.B.* v. *Sheridan Creations, Inc., supra*, 357 F.2d at 248. By the

[19] By considering, although rejecting, an employer's claim of impasse in *John J. Corbett Press, supra*, 401 F.2d at 675, we did at least inferentially suggest that a genuine impasse in negotiations might justify an employer's unilateral withdrawal.

same token, however, the objectives of collective bargaining would be ill-served by compelling employers to remain in the bargaining unit once it becomes clear that no progress is being made within that framework. Thus, all the circuits which have addressed the issue have concluded that a genuine impasse in negotiations will justify an employer's unilateral withdrawal from multi-employer bargaining. *N.L.R.B.* v. *Beck Engineering Co.*, 522 F.2d 475 (3d Cir. 1975); *N.L.R.B.* v. *Hi-way Billboards, Inc.*, 500 F.2d 181 (5th Cir. 1974); *Fairmont Foods Co.* v. *N.L.R.B.*, 471 F.2d 1170 (8th Cir. 1972). *See N.L.R.B.* v. *Associated Shower Door Co.*, 512 F.2d 230, 232 (9th Cir.), *cert. denied*, 423 U.S. 893 (1975) (dictum).

As Mr. Justice Brennan observed, speaking for the Court in *N.L.R.B.* v. *Truck Drivers Local Union No. 449 (Buffalo Linen Supply Co.)*, 353 U.S. 87, 96 (1957):

> "Conflict may arise, for example, between the right to strike and the interest of small employers in preserving multi-employer bargaining as a means of bargaining on an equal basis with a large union and avoiding the competitive disadvantages resulting from nonuniform contractual terms. The ultimate problem is the balancing of the conflicting legitimate interests."

We strike that balance by now joining our sister circuits in holding that an impasse will justify a party's unilateral withdrawal from multi-employer negotiations. And, while the balance in national labor policy is entrusted primarily to the NLRB, the courts of appeals are not entirely without power of review when the "record amply supports the conclusion that the parties were at loggerheads" at the time when a member withdraws from multi-employer bargaining despite a finding to the contrary by the Board. *N.L.R.B.* v. *Beck Engraving Co., supra*, 522 F.2d at 484

(reversing the Board's conclusion that there was no impasse), *see N.L.R.B.* v. *Hi-Way Billboards, Inc., supra*, 500 F.2d 181 (reversing Board's finding that impasse is akin to hiatus in negotiations.) In view of the history of this labor dispute, the conclusion is inescapable that negotiations had reached an impasse on January 19 when the union received the withdrawal letter signed by nineteen members of the Association.

The Association here was formed because the small independent employers felt that they were at a disadvantage in bargaining individually with Local 455 as was evident from their consistent failure to obtain as good a contract as Allied. Multi-employer bargaining is recognized as a means of achieving bargaining equality for the employers. *Buffalo Linen Supply Co., supra*, 353 U.S. at 96. When the union refused to budge on any of the fifty-odd differences between the independent contracts and the Allied contract, it was akin to an affirmation that the Association was useless as a bargaining device.

After the strike began on July 1, 1975, the parties did not meet at all until late August. We agree with the Region 2 Director's finding, made in response to the Association's complaint against Dextra, that as of June 30 a "legitimate impasse was reached" and that Dextra withdrew "subsequent to a collapse of negotiations." [20]

Between late August and January 14, the parties had only four or five negotiating sessions. As the Administrative Law Judge acknowledged, there was "little or no progress during those meetings." He noted as well that the fifty some contract disparities was a cardinal issue in the negotiations.

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[20] Letter from Region 2 Director to Independent Association of Steel Fabricators (November 21, 1975), Respondents' Exhibit 8.

That Local 455 agreed to negotiate separately with four former members of the Association during the August to January interval (Dextra, Atwater, North Shore, and Charla) is also indicative of the inability of the union and the Association to engage in fruitful discussion. Moreover, although the union did not selectively picket or otherwise pressure any particular member, its willingness to negotiate separately with several members had something of a whipsaw effect on the remaining members who watched certain of their withdrawing competitors resume business while they themselves were still in the throes of an economic strike. *Cf. N.L.R.B.* v. *Association Shower Door, supra*, 512 F.2d at 234; *N.L.R.B.* v. *Beck Engraving, supra*, 522 F.2d at 482-83; *N.L.R.B.* v. *Hi-way Billboards, supra*, 500 F.2d at 183.[21]

Although acknowledging the possibility that an impasse existed during July and early August, and again in the fall of 1975, the Board concluded, nevertheless, that Local 455 had broken the impasse in August by circulating a revised proposal to the Association and that any subsequent impasse was broken when the parties met in January after the union had reached a settlement with Allied. That analysis overlooks one salient fact. At neither the August nor January meeting did Local 455 make any concessions concerning the single most important issue in dispute, the elimination of disparities between the Association and Allied contracts. It is true that Local 455 presented a modified proposal at the August meeting and a more complete proposal in January after the Allied contract was consummated. But not every shift in position signifies progress, especially if it is unresponsive to the principal issue in contention. *See Plumbers & Steamfitters Union No. 323*, 191 N.L.R.B. 592, 594 (1971).[22] When, at the January 14 meeting, the union categorically rejected the Association's offer to provide the same contractual terms as Allied, Association members could well have concluded that "there was no realistic prospect that continuation of discussion at that time would have been fruitful," which is a working definition of impasse. *American Federation of Television and Radio Artists* v. *N.L.R.B.*, 395 F.2d 622, 628 (D.C. Cir. 1968). *See N.L.R.B.* v. *Hi-way Billboards, Inc.*, 473 F.2d 649 (5th Cir. 1973).

[21] As the Ninth Circuit has noted, one of the reasons for accepting impasse as a justification for an employer's unilateral withdrawal is that "[w]ere the rule otherwise, a union could reach an agreement with one or more employers and then whipsaw the remaining members of the significantly fragmented and weakened multi-employer unit," *Associated Shower Door, supra*, 512 F.2d at 232.

Moreover, contrary to the Board's finding, there is no substantial evidence that when the parties left the January 14 meeting they had agreed to meet again. Union President Colavito testified only that the state mediator closed the January 14 session with the observation that "there is no sense in going any further today," which Colavito took to mean "[w]e would be called by the mediator concerning the next meeting." Apart from that ambiguous statement by the mediator, there was no evidence that the parties intended to resume discussion.

Indeed, two days later, on January 16, the Association sent notice to the union that nineteen employers had withdrawn bargaining authorization from the Associa-

[22] While it may be true, as the Administrative Law Judge concluded, that there was "movement" in the parties' positions at the January 14 meeting, a shift in position will not of itself signify the end of an impasse unless it appears that further discussion would be fruitful. Here, in view of the union's intransigence concerning the Allied contract disparities, its January 16 tender of a more complete proposal is without significance.

tion. The union received the notice on the 19th. At that point, the strike had lasted for six and a half months and the prospects for settlement were less encouraging than in cases where employers' claims of impasse have been rejected.[23] That the union and the five employers remaining in the Association reached a settlement shortly after the majority withdrawal does not militate against a finding of impasse on January 19, since the withdrawal might well have heightened willingness to reach an accord, *see N.L.R.B.* v. *Beck Engraving Co., supra,* 522 F.2d at 484-85.

Nor is the circumstance that five members remained in the Association of major significance. Nineteen members had withdrawn, eleven of whom had neither assisted nor at that point signed contracts with Local 810. Realism compels us to conclude, as did the Tenth Circuit in *N.L.R.B.* v. *Southwestern Colorado Contractors Association,* 447 F.2d 968, 969 (1971) that:

> "The reduction by nearly fifty percent of a small multiemployer bargaining unit certainly acknowledges to a considerable degree the practical frustration of the original unit as a bargaining entity."

And see Connell Typesetting Co., 212 N.L.R.B. No. 140 (1974).[24]

[23] *See, e.g., N.L.R.B.* v. *Central Plumbing Co.,* 492 F.2d 1252 (6th Cir. 1974) (parties negotiating under terms of agreement); *N.L.R.B.* v. *Corbett Press, supra,* 401 F.2d at 675 (negotiations, though "somewhat protracted, were continuing normally").

[24] Nor is it significant that respondents failed to attribute their withdrawal to an impasse in their January 16 letter to the union. In the context of this labor dispute, respondents' invocation of the impasse doctrine does not appear to be an "afterthought," *cf. N.L.R.B.* v. *Tulsa Sheet Metal Workers, Inc.,* 367 F.2d 55, 58 (10th Cir. 1966).

Since we find that the Association members were entitled to withdraw in view of the impasse in negotiations, it is unnecessary to consider respondents' contentions that there were other "unusual circumstances" warranting their departure such as dire economic conditions and alleged surface bargaining on the part of Local 455.

A question, however, remains as to whether notice of withdrawal is required before it can become effective. Nineteen respondents signed the letter dated January 16, received January 19, indicating that they had withdrawn bargaining authorization from the Association. Six of these respondents had already in effect withdrawn *without notice* by executing contracts with Local 810.[25] The stability of labor relations requires that such tacit withdrawals without notice be viewed as ineffectual.

The Board has consistently taken the position that withdrawal from multi-employer bargaining is effective only when unequivocally communicated to the other party. *Goodsell & Vocke, Inc.,* 223 N.L.R.B. 60, 66 (1976), *enforced,* 559 F.2d 1141 (9th Cir. 1977); *Pomona Building Materials, Co.,* 174 N.L.R.B. 558, 560 (1969), *enforced,* 73 L.L.R.M. 2944 (9th Cir. 1970). At least one circuit has taken the same view, *N.L.R.B.* v. *Dover Tavern Owners' Association,* 412 F.2d 725, 728 n.7 (3d Cir. 1969), and two others have indicated in dicta that companies withdrawing from multi-employer bargaining in the face of an impasse must give unequivocal notice to the union. *N.L.R.B.* v. *Association Shower Door, Inc., supra,* 512 F.2d at 232; *N.L.R.B.* v. *Central Plumbing, supra,* 492 F.2d at 1255. We decline to endorse a different rule here.

[25] Roman (November 18); Greenpoint (November 20); Paxton (December 15); Melto (December 22); Long Island (January 6); Mohawk (January 9).

For an employer to withdraw bargaining authorization from a multi-employer association without notifying the union is not simply a breach of etiquette. Such tacit withdrawal not only withholds knowledge from the union about the composition of the bargaining unit, but also deprives it of the opportunity either to initiate independent negotiations with the withdrawing party or to file a complaint promptly with the Board. To abrogate the notice requirement when one party leaves multi-employer bargaining in the face of an impasse would interject a further element of uncertainty into a negotiating context already destabilized by withdrawal.[26]

We conclude therefore that respondents' withdrawal from multi-employer bargaining was not effective until communicated to the union. Accordingly, those employers who signed union security contracts with Local 810 prior to January 19 violated § 8(a)(5) by disabling themselves from bargaining with the union recognized by the Association.

III

The Refusal to Bargain

Two questions remain. First, were respondents bound, in spite of their withdrawal, to the terms of the stipulation of settlement negotiated by five members remaining

[26] The notice requirement may also be necessary to prevent disingenuous invocations of the impasse doctrine. As the facts in *Acme Wire Works*, *see* note 1 *supra*, suggest, abrogation of the notice requirement might encourage employers to claim retrospectively that they had withdrawn in the face of an impasse and to support their assertion by a letter dated but not delivered during a hiatus in negotiation.

in the Association? Second, were those respondents who did not violate § 8(a)(5) by signing an agreement with Local 810 before January 19 under any obligation to bargain individually with Local 455 after their withdrawal?

The Board found all respondents, except Trojan and Heuser, guilty of § 8(a)(5) violations and ordered them to execute the January 23 stipulation. We refuse to enforce this part of the Board's order since the signatories of the stipulation made it clear that they were not signing on behalf of the Association. There was neither an agency in fact nor an apparent agency relation between the minority of the Association who signed and the majority who withdrew; the union was on notice that the signers had disavowed any agency relationship. The effort of the president of Local 455 unilaterally to resurrect the corpse of the Association was in this context unavailing. *See N.L.R.B.* v. *Southwestern Colorado Contractors Association*, *supra*, 447 F.2d 968. Even those employers who may be subject to a bargaining order for § 8(a)(5) violations cannot be forced to execute the January 23 stipulation. It is not within the power of the Board, in these circumstances, to dictate substantive contractual terms to which neither an employer nor its agent has acceded. *H.K. Porter Co.* v. *N.L.R.B.*, 397 U.S. 99, 108 (1970). See *N.L.R.B.* v. *Burns International Security Services*, 406 U.S. 272, 281 (1972).

Though respondents cannot be held to the terms of the stipulation as ordered by the Board, a question remains as to the status of Local 455 as the bargaining agent for their employees. In this case, respondents fall into three main groupings; (1) those employers[27] who

[27] Roman (November 18); Greenpoint (November 20); Paxton (December 15); Melto (December 22); Long Island (January 6); Mohawk (January 9).

signed with Local 810 before giving notice of withdrawal; (2) those employers[28] who signed with Local 810 after giving notice of withdrawal; (3) those employers[29] who gave notice of withdrawal but did not sign an agreement with either union.[30]

For the reasons discussed in the preceding section, we hold that the first class of employers, by executing contracts with Local 810 before communicating their withdrawal to Local 455, are guilty of a refusal to bargain. With respect to the second class, who properly withdrew and served notice upon the union before signing with Local 810, the critical question is whether they had any obligation after withdrawal to bargain separately with Local 455. The same issue, of course, arises as to the third class of employers who gave timely notice and signed with neither union.

[28] Master (January 28) and Koenig (January 30).

[29] Zaffino, Ikenson, Achilles, Kuno, Peele and Spigner. The Administrative Law Judge found that, as of the time of hearing, two of these employers, Spigner and Ikenson, were no longer in a business requiring use of the kind of production and maintenance workers belonging to Local 455. The Board's order as modified herein will be applicable to them only if they resume operations requiring such employees.

[30] Of the remaining respondents, two, Trojan and Heuser, ultimately executed contracts with Local 455. Two others, Roma and Cervenka, did not sign the January 16 letter notifying the union of their withdrawal. Although as we noted in the preceding section, notice is a prerequisite to a valid withdrawal from an extant multi-employer association, we do not attach significance to Cervenka and Roma's failure to give notice that they were withdrawing bargaining authorization from an Association which had effectively collapsed after the majority's withdrawal. Thus Roma, who signed with neither union, may be considered part of class three; Cervenka, who signed with Local 810 on February 17, may be included in class two.

There is no holding squarely in point.[31] The Board had not certified Local 455 as the bargaining agent for respondents' employees within the year of the withdrawal. The union was not, therefore, entitled to a conclusive presumption that it enjoyed majority status among the employees. *Cf. N.L.R.B.* v. *Burns International Security Services, supra*, 406 U.S. at 279 n.3; *Brooks* v. *N.L.R.B.*, 348 U.S. 96 (1954). It had, however, been recognized as the bargaining agent for the production and maintenance employees for many years. As the incumbent union, it was, we believe, entitled to a rebuttable presumption of continued majority status for a reasonable interval after the individual contracts expired on June 30. *See N.L.R.B.* v. *Cayuga Crushed Stone*, 474 F.2d 1380, 1383 (2d Cir. 1973); *N.L.R.B.* v. *Newspapers, Inc.*, 515 F.2d 334, 341 n.13 (5th Cir. 1975). Employers charged with a refusal to bargain could rebut the presumption by introducing evidence that the union did not in fact have majority support when their refusal occurred or that their refusal was founded on a good faith doubt of the union's majority status. *N.L.R.B.* v. *Windham Community Memorial Hospital*, Dkt. No. 77- 4187, slip op. at 3027 (2d Cir. May

[31] In *Beck*, the Third Circuit implied that a withdrawing employer had an obligation to bargain individually with the union recognized by the multi-employer association, but declined to sustain the refusal to bargain charges because the particular employer involved had had a good faith doubt as to the union's majority status at the time of withdrawal, 522 F.2d at 485. Thus, the *Beck* court's analysis suggests that a good faith doubt can determine the nature of the obligation to bargain anew, which is the approach we have adopted here.

12, 1978); *Retired Persons Pharmacy* v. *N.L.R.B.*, 519 F.2d 486, 489 (2d Cir. 1975).[32]

The added difficulty here, however, is that the union apparently never elected to request bargaining with the individual employers. It chose, instead, to stand upon its position that the withdrawing employers were bound by the stipulation signed by the minority. Since the union offered no alternative, we cannot conclude on this record that the failure to arrive at individual agreements with Local 455 by those respondents who withdrew with notice was the result of the individual employer's refusal to bargain. *Cf. N.L.R.B.* v. *Flomatic Corp.*, 147 N.L.R.B. 1304, 1305 (1964), *enf. granted in part, denied in part*, 347 F.2d 74, 76 (2d Cir. 1965). Hence, the employers in class three, who signed with neither union, did not violate § 8(a)(5).[33]

So far as respondents in the second class are concerned, since they intended to sign with some union, we

[32] A good faith doubt is, in effect, a doubt with a rational basis in fact for believing that the union does not enjoy majority support. *N.L.R.B.* v. *Rish Equipment Co.*, 407 F.2d 1098, 1100-01 (4th Cir. 1969). Once an employer advances some credible basis for doubt, the General Counsel has the burden of establishing that the refusal to bargain was in fact improperly motivated. *N.L.R.B.* v. *River Togs, supra*, 382 F.2d at 206; *N.L.R.B.* v. *Great Atlantic & Pacific Tea Co.*, 346 F.2d 936, 939-40 (5th Cir. 1965).

[33] Although two of these employers, Roma and Zaffino, assisted Local 810 in violation of §§ 8(a)(1) and (2), the commission of such unfair labor practices does not of itself establish a refusal to deal. *See Gissel Packing Co., supra*, 395 U.S. at 615. And although § 8(a)(1) and (2) violations may in some instances be so substantial as to warrant a bargaining order, *see Gissel, supra*, 395 U.S. at 610-16; *N.L.R.B.* v. *River Togs, supra*, 382 F.2d at 208, the Board did not so find here, and we decline to impose a bargaining order on that basis.

believe that they were under a duty to seek bargaining with Local 455 on an individual basis before negotiating with Local 810. Their execution of agreements with Local 810 constituted a refusal to bargain which is excusable only if, at the time of execution, Local 455 had lost its majority or the employers had a rational basis for doubting its majority. In the absence of evidence as to good faith doubt or actual loss of majority status, the Board may find respondents in class two guilty of a refusal to bargain. *See N.L.R.B.* v. *Beck Engraving, supra*, 522 F.2d at 485; *N.L.R.B.* v. *Windham Community Memorial Hospital, supra*, slip op. at 3027; *Retired Persons Pharmacy, supra*, 519 F.2d at 489.[34]

[34] We think that the Board erred in its handling of the four respondents who introduced evidence at the hearing with regard to their good faith doubt of Local 455's majority status when they signed with Local 810. Two of these employers, Mohawk and Paxton, executed contracts with Local 810 before giving notice of withdrawal. The other two employers, Koenig and Master, signed after notice. The Board considered all four to be barred from a good faith defense on the ground that even if all thirty employees of these four employers had changed allegiance, nevertheless, since 250 union workers were employed in the aggregate by members of the Association, the question of majority status was to be determined by whether Local 455 had a majority of the whole unit.

For the reasons advanced in Part II, we disagree with the Board's fundamental premise that the multi-employer unit remained intact. We agree however that the two employers in class one, Mohawk and Paxton, could not lawfully execute contracts with Local 810 prior to communicating their withdrawal from an association which had recognized Local 455. These employers thus violated § 8(a)(5) regardless of any shift in loyalties among their own employees at the time of execution. The Board is, of course, free to consider such evidence concerning employee allegiance in determining whether an election rather than a bargaining order would at this point be a more appropriate sanction. *See* p. 3782 *infra*. With respect to Koenig and Master, the Board erred in refusing to consider evidence of their good faith doubt of Local 455's majority status.

We find unavailing respondents' contention that Local 455's misconduct should bar entry of a bargaining order in its behalf under the rule of *Laura Modes Co.*, 144 N.L.R.B. 1592 (1963). The Administrative Law Judge's rejection of the *Laura Modes* defense rested in large part on his reconciliation of disputed factual accounts and on credibility determinations which we are reluctant to disturb. *See N.L.R.B.* v. *Columbia University*, 541 F.2d 922, 928 (2d Cir. 1976); *N.L.R.B.* v. *Dinion Coil Co.*, 201 F.2d 484, 490 (2d Cir. 1952). Whether the union's conduct was, on the whole, of such a character as to warrant the withholding of a bargaining order is a question peculiarly within the Board's expertise. *Donovan* v. *N.L.R.B.*, 520 F.2d 1316, 1321, 1323 (2d Cir. 1975), *cert. denied*, 423 U.S. 1053 (1976). We defer to its assessment here. However, in view of the fact that the unfair labor practices did not taint election machinery, and because of the lapse of time and our lack of information concerning current labor relations in the industry, we believe that the Board should have an opportunity to consider whether an election rather than an order to bargain with Local 455 might be a more appropriate sanction for the § 8(a)(5) violations here involved. *Cf. N.L.R.B.* v. *Gissel Packing Co., supra*, 395 U.S. at 610-18. Accordingly, we enforce those portions of the Board's order requiring respondents in class one to cease recognition of, and to abrogate their contracts with, Local 810 unless and until it is certified. We leave to the Board's discretion whether to impose a bargainng order on respondents in class one and on any respondents in class two who are guilty of § 8(a)(5) violations.

IV

Reinstatement and Discharges

A strike begun in support of economic objectives may be converted to an unfair labor practice strike by an employer's violation of the Act, and unfair labor practice strikers are entitled to reinstatement upon their unconditional offer to return to work. *Mastro Plastics Corp* v. *N.L.R.B.*, 350 U.S. 270, 278 (1956); *N.L.R.B.* v. *Fitzgerald Mills Corp.*, 313 F.2d 260, 269 (2d Cir.), *cert. denied*, 375 U.S. 834 (1963). The Board reasoned that various employers' threats of discharge and the signing of collective bargaining agreements with Local 810, together with the general refusal to bargain with Local 455 after withdrawal from the Association, converted the strike against all respondents into an unfair labor practice strike by January 16 at the latest. The Board viewed Colavito's letters requesting reinstatement as satisfying the unconditional offer to return to work requirement, and concluded, therefore, that each respondent's refusal to reinstate its striking employees uupuounu receipt of the letter was violative of §§ 8(a)(3) and (1) of the Act.[35] Given our legitimation of certain respondents' withdrawal from multi-employer bargaining and our recognition of possible good-faith defenses to the refusal to bargain charges, it follows that not all respondents' employees became unfair labor practice strikers. We would, nevertheless, have enforced the Board's reinstatement order against those employers guilty of §§ 8(a)(1), (2) and (5) violations, *N.L.R.B.* v. *Milco, Inc.*, 388 F.2d 133, 139 (2d Cir. 1968),

[35] Section 8(a)(3), 29 U.S.C. § 158(a)(3), provides that it shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ."

if the record had reflected an unconditional offer to return to work. We are constrained to hold, however, that there is inadequate support for a finding that the offer to return to work was unconditional.

During February and March of 1976, the union sent a uniform letter to all respondents requesting that their employees "unconditionally return to work," but each letter was accompanied by another letter demanding that the employers implement the January 23 stipulation. Testimony by the union's business representative Matienzo confirmed the obvious inference to be drawn from the pairing of those letters, *i.e.*, that union workers were prepared to return to work only if their employers signed the January 23 "contract" with Local 455. Since the record establishes no offer to return to work which was in fact, as well as form, unconditional, and since the Board made no finding that such a request would have been futile under the circumstances, *N.L.R.B.* v. *Comfort, Inc.*, 365 F.2d 867, 877-78 (8th Cir 1966), respondents' employees are not entitled to reinstatement as unfair labor practice strikers. *H.&F. Birch Company Plant* v. *N.L.R.B.*, 456 F.2d 357, 363-64 (2d Cir. 1972); *Moore Business Forms*, 224 N.L.R.B. 393, 409 (1976).

For similar reasons, we cannot enforce the Board's reinstatement order against Greenpoint and Long Island on the theory that they discharged economic strikers prior

[36] We do not find persuasive respondents' assertion that the statements to Greenpoint and Long Island employees to the effect that if they did not join Local 810 they might be replaced or they should "look for another job" were predictions of discharge rather than actual discharges. Under the circumstances, the employees could properly infer that they had in fact been discharged. *N.L.R.B.* v. *Comfort, Inc., supra*, 365 F.2d at 875.

to finding replacements. Although such conduuct is plainly violativé of §§ 8(a)(1) and (3) of the Act, *N.L.R.B.* v. *International Van Lines*, 409 U.S. 48 (1972),[36] the Board's settled rule is that

> "[e]mployees who are discharged while on strike also must indicate abandonment of the strike and a willingness to return to work, in order to establish their right to their jobs and resumption of wages unless there is a showing that such application would be rejected, *i.e.*, that it would have been futile."

Astro Electronics, Inc., 188 N.L.R.B. 572, 573 (1971) [footnotes omitted]. *See Penzel Construction Co.*, 185 N.L.R.B. 544 (1970), *enforced*, 449 F.2d 148 (8th Cir. 1971). Here there was no proof of an unconditional offer to return to work and no showing of futility.

VII

Remedies

1. Substantial evidence supports the Board's findings that the Association violated §§ 8(a)(1), (2) and (5) of the Act and that Roma, Greenpoint, Long Island, Paxton, Zaffino and Trojan violated §§ 8(a)(1) and (2) by interfering with their employees' selection of a bargaining representative and by rendering unlawful assistance to Local 810. We accordingly grant enforcement of those portions of the Board's requiring them to cease and desist from such unfair labor practices.

2. We refuse enforcement of the order against all respondents (except Trojan and Heuser) directing them to implement the terms of the January 23 stipulation negotiated by five members of the Association.

3. Roman, Long Island, Melto, Mohawk, Greenpoint, and Paxton, all of whom signed contracts with Local 810 before January 19 are guilty of a refusal to bargain with Local 455. We grant enforcement of those provisions of the Board's order requiring them: (a) to cease recognizing Local 810 as the bargaining representative of their production and maintenance employees unless and until it shall have been certified as the exclusive representative of such employees; (b) to abrogate their collective bargaining agreements with Local 810 and any extensions thereof unless and until Local 810 is certified; and (c) to reimburse any of their present and former employees for dues paid to Local 810 pursuant to the unlawful contracts.

Enforcement granted in part, denied in part, as set forth in this opinion.[37]

[37]We would normally remand in this case for further development of facts based on this opinion. Since so much time has now elapsed, however, we must assume that there may presently be continuing relationships of which we are unaware. We shall, accordingly, not formally remand but leave it to the parties to petition the NLRB for such evidentiary hearings, if any, that they desire under the principles outlined in this opinion.

Decision and Order

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 29—CA—4853

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.; ACHILLES CONSTRUCTION CO., INC.; GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.; HEUSER IRON WORKS, INC.; IKENSON IRON WORKS, INC.; KUNO STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS CO.; MASTER IRON CRAFT CORP.; MELTO METAL PRODUCTS CO., INC.; MOHAWK STEEL FABRICATORS, INC.; THE PEELE COMPANY; ROMAN IRON WORKS, INC.; SPIGNER AND SONS STRUCTURAL STEEL CO., INC.; S. CERVENKA AND SONS, INC.

Case 29—CA—4922

PAXTON METALCRAFT CORP., DIVISION OF APEX INDUSTRIES, INC.; KOENIG IRON WORKS, INC.; TROJAN STEEL CORP.; G. ZAFFINO AND SONS, INC.; ROMA IRON WORKS, INC.

Case 29—CA—4772

GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.

Case 29—CA—4921

ROMA IRON WORKS, INC.

—and—

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

—and—

STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Party to the Contract

D—2762

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

Case 29—CB—2461

—and—

STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

On March 14, 1977, Administrative Law Judge Morton D. Friedman issued the attached Decision in these consolidated proceedings. Thereafter, Respondents filed exceptions with supporting briefs and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has

decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge, in crediting Local 455 President Colavito over Association President Spigner with regard to a private conversation in August, 1975, noted that a statement made by Spigner concerning "The Teamsters" was "probably referring to Local 810," whereas the record reflects that, at least in this context, Spigner was referring to Teamster Local 819. We nonetheless find that the Administrative Law Judge's crediting of Colavito is supported by other substantial evidence in the record.

[2] In adopting the Decision of the Administrative Law Judge, we do not rely on his statement in sec. III, J, par. 8, that the withdrawal of authorization to bargain by the 17 Employers constituted a violation of Sec. 8(a)(5) of the Act. Although the Administrative Law Judge correctly noted that the withdrawal was untimely, this would not, in and of itself, be a violation of Sec. 8(a)(5). Rather, the untimely withdrawal followed by the Union's demand that bargaining continue in the multiemployer unit and the Employers' subsequent refusal combined to form the basis for an 8(a)(5) refusal to bargain.

Furthermore, we do not rely on the intimation of the Administrative Law Judge in sec. III, J, par. 5, that the unfair labor practices of the Association and its Employer-Members contributed to a finding of an untimely or ineffective withdrawal from the multiemployer unit, inasmuch as we would find the withdrawal to be untimely and ineffective even absent any unfair labor practices.

Decision and Order

Administrative Law Judge and hereby orders that Respondents Independent Association of Steel Fabricators, Inc., New York, New York, and its Employer-Members (listed in the caption hereof), their officers, agents, successors, and assigns, and Respondent Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C., August 11, 1977

HOWARD JENKINS, JR., Member
JOHN A. PENELLO, Member
PETER D. WALTHER, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

Decision

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

Case 29—CA—4853

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.; ACHILLES CONSTRUCTION CO., INC.; GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.; HEUSER IRON WORKS, INC.; IKENSON IRON WORKS, INC.; KUNO STEEL PRODUCTS CORP.; LONG ISLAND STEEL PRODUCTS CO.; MASTER IRON CRAFT CORP.; MELTO METAL PRODUCTS CO., INC.; MOHAWK STEEL FABRICATORS, INC.; THE PEELE COMPANY; ROMAN IRON WORKS, INC.; SPIGNER AND SONS STRUCTURAL STEEL CO., INC.; S. CERVENKA AND SONS, INC.

Case 29—CA—4922

PAXTON METALCRAFT CORP., DIVISION OF APEX INDUSTRIES, INC.; KOENIG IRON WORKS, INC.; TROJAN STEEL CORP.; G. ZAFFINO AND SONS, INC.; ROMA IRON WORKS, INC.

Case 29—CA—4772

GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.

Case 29—CA—4921

ROMA IRON WORKS, INC.

—and—

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

—and—

STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Party to the Contract

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

Case 29—CB—2461

—and—

STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Alvin Blyer, Esq., of Brooklyn, N.Y., for the General Counsel.

Stanley Israel, Esq. (*Bluestone, Kliegman & Israel*), of New York, N.Y., for the Independent Association of Steel Fabricators, Inc., and most of the Respondent-Employers.

Harold Spigner, Esq., of Lake Success, N.Y., for Respondent Spigner and Sons Structural Steel Co., Inc.

Mr. Seymour Ikenson, of Port Washington, N.Y., for Ikenson Iron Works, Inc.

Belle Harper, Esq., and *Vicki L. Erenstein, Esq.* (*Sipser, Weinstock, Harper, Dorn & Liebowitz*), of New York, N.Y., for Local No. 455.

Robert M. Ziskin, Esq., Robert Saltzstein, Esq., and *Jeffrey Kreisberg, Esq.* (*Mirkin, Barre, Saltzstein & Gordan, P.C.*) of Great Neck, N.Y., for Local 810.

Statement of the Case

MORTON D. FRIEDMAN, Administrative Law Judge: This case was heard at Brooklyn, New York on various days between June 7 and July 11, 1975, upon a consolidated amended complaint based upon four separate charges and amendments thereto filed by Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, here called Local 455, and upon a complaint against Local 455, based upon a charge filed by Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 810.[1]

[1] The charge in Case No. 29-CA-4921 was filed as Case No. 2-CA-1404 on December 18, 1975 and the complaint in that was issued January 28, 1976. The charge in Case No. 29-CA-4772 was filed December 18, 1975 and the complaint in that case was issued February 9, 1976. The original charge in Case No. 29-CA-4853 was filed February 6, 1976 and the first amended charge in that case was filed March 1, 1976. The original charge in Case No. 29-CA-4922 was filed as Case No. 2-CA-14106 on February 9, 1976 and the first amended charge in that case was filed March 1, 1976. On April 27, 1976, a consolidated amended complaint in all of the foregoing numbered cases was issued, superseding all complaints in any of the cases theretofore issued. On May 20, 1976, an amendment to the said consolidated complaint was issued.

The complaint in Case No. 29-CB-2461 was issued June 4, 1976 based upon a charge filed by Local 210 on April 14, 1976. That case was ordered consolidated at the hearing by the Administrative Law Judge because it concerned matter directly connected with one of the defenses of the Respondents in the four other cases, as hereinafter related.

Decision

The consolidated amended complaint in the four cases against the named Employers and the Independent Association of Steel Fabricators, Inc., herein called the Association, alleges interference, restraint, and coercion in violation of Section 8(a)(1) of the Act; unlawful assistance to Local 810 in violation of Section 8(a)(2) of the Act; discriminatory discharge and refusal to reinstate striking employee members of Local 455 upon their unconditional offer to return to work, in violation of Section 8(a)(3) of the Act; and refusing to bargain with Local 455 by untimely withdrawal from the Association and other actions in violation of Section 8(a)(5) of the Act.

The complaint against Local 455, (Case No. 29-CB-2461) alleges threats of violence and destruction of property in violation of Section 8(b)(1)(A) of the Act.

The respective answers of all of the Respondents in all of the cases denied the commission of unfair labor practices, while admitting other matters such as jurisdiction of the Board over the Respondents and subject matter.

Upon the entire record,[2] and upon consideration of the briefs and arguments of the parties, and upon my observation of the demeanor of the witnesses, I make the following:

[2] There being no opposition thereto, counsel for General Counsel's motion to correct the complaint is granted. The corrections are annexed hereto as Appendix "T."

Decision

Findings of Fact

I. The Businesses of the Respondent-Employers

The Association, which at all times material herein has maintained an office and place of business in Brooklyn, New York, performs, and has performed, among other things, the function of negotiating and executing collective-bargaining agreements with Local 455, on behalf of its members who are the named individual Respondent-Employers and other employers engaged in like or similar businesses.

Each of the individually named Respondent-Employers, all members of the Association, are corporations maintaining offices and facilities in the city of New York and its environs, State of New York, and each is engaged in some branch of the business of manufacturing, selling, distributing and installing various products made of iron, steel, and other metals and related products. During the year immediately preceding the issuance of the consolidated amended complaint herein, the employer-members of the Association derived gross revenues in excess of $500,000 and purchased and caused to be transported to their places of business iron, steel, metal products and other goods and materials of a value in excess of $50,000 of which goods and materials, items of a value in excess of $50,000 were transported and delivered to their places of business directly from states other than the State of New York. Additionally, other enterprises located in the State of New York, each of which other enterprises had received said goods and materials in interstate commerce directly from states in the United States other than the states in which they were located also sold items and shipped the same to the Respondent-Employers of a value in excess of $50,000.

Accordingly, it is admitted, and I find and conclude, that the Respondent Association, and the Respondent-Employers herein, and each of them, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organizations Involved

It is admitted, and I find, that Local 455 and Local 810 are each labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *Background and Issues*

As above noted, the Respondent-Employers are engaged in the various branches of the iron and steel construction and fabrication business. They are scattered over various parts of the city of New York and virtually all of its boroughs and also in the counties of Nassau and Suffolk on Long Island and north of New York City in Rockland and Westchester Counties. The Respondent-Employers' employees have been represented for various lengths of time by Local 455, the relationship in some instances going back over a quarter of a century. For the most part, each of these Respondent-Employers have dealt with Local 455 individually and have, with perhaps some exceptions, been economically too weak to do more than accept a more or less standardized contract evolved by Local 455, with each contract varying to the extent that the shops had individual problems which required specialized clauses in their various contracts.

The employees in the shops of the Respondent-Employers, and other employers like situated, are basically production and maintenance employees and in some instances there are plant clericals. These general classifi-

cations broadly describe the employees represented by Local 455 in the various shops under contract.

At the same time, for a number of years past, another group of employers, also engaged in the same industry but whose end product or basis work, might have varied somewhat from those of the Employers named herein as Respondents, had formed an association named "Allied Building Metals Industries, Inc.," herein called "Allied," which has negotiated multiemployer collective-bargaining agreements with Local 455 for a number of years last past. It is evident from the record that some of the Respondent-Employers had, at various times, been members of Allied. However, before the formation of the Association herein, all of the Respondent-Employers had been dealing independently with Local 455.

As is well known, the years 1974 and 1975 were very bad years, economically, for the building and construction trades industry with which all of the Respondent-Employers herein are closely allied. In addition, the contracts which Local 455 termed "the standard independent contracts," and to which the Respondent-Employers herein were signatories individually, evidently did not have a number of provisions which the Respondent-Employers herein desired to have and which would have, evidently, benefited them economically. In view of the recession in the construction industry, and in view of the fact that Allied, as a multiemployer bargaining association, had received what the Respondent-Employers herein consider more advantageous contracts, early in 1975, the Respondent-Employers herein decided to form the Association in order, among other things, to be able to exercise and use the additional economic "clout" which they presumed they would have if they bargained on an association-wide basis, rather than as individuals, in order to obtain a contract equally as beneficial as that

enjoyed by the members of Allied. In early 1975 the Association was formed as a trade association to deal not only with Local 455 but also with other unions representing various employees of the Respondents. In fact, in the most recent renewal year Respondent Spigner had requested the same benefits, as an individual employer that were received by the members of Allied, but had not been able to obtain them.

After the formation of the Association, on April 24, 1975, its president, Irving D. Spigner, notified Local 455 (after Local 455 had notified the individual Employers that their contracts were due to expire on June 30, 1975), that the Association had been formed and that it was authorized to bargain on behalf of the members of the Association and listed the membership of the Association. Thereafter, Local 455 and the Association began bargaining, but at the expiration of the individual contracts on June 30, 1975, inasmuch as no agreement had been reached, the employees of the various Employers who were members of Local 455 went out on strike. Thereafter, some further bargaining took place but, by reason of the inability to reach agreement, all but five of the employer-members of the Association, named as Respondents herein, notified Local 455 through the Association that the Association was no longer authorized to bargain with Local 455 on their behalf.

Additionally, some of the members of the Association during all this time and, assertedly, even before the times during which bargaining began in the late spring of 1975, began to encourage their employees to leave Local 455 and join Local 810, for the reason that these Employers felt that they could obtain more advantageous contract terms from Local 810 than they could from Local 455. It is also gainsaid, that Local 810 is, and at all times material hereto has been, actively attempting

to organize employees of employers engaged in the same industry as the members of the Association herein. As a result, a number of the members of the Association who are Respondents in the instant proceeding, ultimately signed collective-bargaining agreements with Local 810 and, in the complaint herein, are accused of having done so despite the fact that their employees had not chosen Local 810 as their bargaining representatives. These cases shall be dealt with in detail hereinafter.

It is also alleged in the complaint that some of the Respondent-Employers' employees, when instructed by the business agents and various officials of Local 455, made unconditional offers to return to work during what the General Counsel claims to have been an unfair practice strike, and the various Respondent-Employers to whom such applications were made refused discriminatorily to reinstate such employees.

The Respondent-Employers named herein and the Association defend on a number of basis. They contend that their withdrawal from multiemployer bargaining with Local 455 came only after impasse was reached in bargaining. Although admitting the Board has held that impasse alone does not warrant withdrawal from multiemployer bargaining, the Respondents contend that other factors, together with the impasse, created an unusual situation which warranted withdrawal. Among the factors cited by the Respondents are (1) that Local 455 was never in favor of and, in fact, sought to break up the Association because it did not desire to give to the Association members the beneficial terms and conditions enjoyed by the members of Allied; (2) that Local 455 never bargained in good faith with the Association and, accordingly, association bargaining constituted a fruitless endeavor which would never have been brought to fruition because of the alleged plan of Local 455 not to

come to an agreement with the Association on behalf of the Association's members; 3) alleged violence during picketing by Local 455 and its members was so extensive and pervasive as to not only be considered as a factor, along with the impasse and the reluctance and refusal of Local 455 to bargain in good faith, but also, even assuming that the Respondents refused to bargain in good faith with Local 455, and even assuming that the withdrawal from the multiemployer bargaining through the Association was untimely and therefore improper, the Board should withhold a bargaining order.[3] Additionally, the Respondents contend that there was no discriminatory refusal to reinstate any of the employees because the offer made to return to work was not unconditional, but was conditioned upon the Employers signing and becoming a party to the agreement ultimately entered into between the few remaining members of the Association who dealt singly with Local 455 after the withdrawal from multiemployer bargaining of the vast majority of the Association members who are Respondents in this proceeding.

With regard to the charges filed by Local 810 against Local 455 alleging violations of Section 8(b)(1)(A) of the Act, based upon the violence relied upon by the Respondent-Employer members of the Association as part of their defense, Local 455 denies the commission of any of the so-called violent occurrences and, in fact, the General Counsel's complaint resulting from the charges filed by Local 810 alleges only several instances of violation, some threats by various union officials of violence and, the destruction of property of the Employers, and coercive taking of photographs. These allegations, as noted above, are denied by Local 455. The issues presented in

[3] *Laura Modes Company*, 144 NLRB 1592.

the case against Local 455 deal basically with credibility. In fact, much of the contention of violence and threats thereof by Local 455 involved in both the proceedings against the Respondent-Employers herein and against Local 455 involve serious and difficult questions of credibility.

Thus, the issues presented by the pleadings and the various contentions of the parties are:

1. Did the Respondent-Employers named in the complaint herein unlawfully and untimely withdraw from association and multiemployer bargaining in violation of Section 8(a)(5) of the Act?

2. Did the Respondent-Employers unlawfully assist Local 810 to organize their employees by encouraging its employees to join Local 810 and threatening reprisals if they did not and commit other acts in support thereof in violation of Section 8(a)(2) and (1) of the Act?

3. Did the employees of the Respondent-Employers unconditionally offer to return to work and, if so, did the said Respondents discriminatorily refuse to reinstate the said employees because of their activities on behalf of Local 455 and thereby discourage membership in Local 455 in violation of Section 8(a)(3) of the Act?

4. Did some of the Employers discharge employees for refusing to abandon Local 455 and join Local 810?

5. Did the conduct of various officials and pickets who picketed the various Respondent-Employers' establishments constitute such pervasive violent activities as would warrant the withholding of a bargaining order by the Board?

6. Did the conduct of the union officials constitute threats of violence and such destruction of property as would constitute coercion of employees in violation of Section 8(b)(1)(A) of the Act?

There are a number of subsidiary issues also presented in connection with the above-cited principal issues and these will be dealt with in connection therewith.

B. *The Negotiations and the Strike*

On or about April 9, 1975, Local 455 sent to 18 Employers, excluding Spigner and Sons, letters over the signature of William Colavito, Local 455 president, to the effect that Local 455 was terminating the current contracts of all of these independent Employers at the end of the current contract year (June 30, 1975) and that Local 455 desired to meet with representatives of each of the said Employers to negotiate a new agreement. On April 21, 1975, the newly formed Association, by letter, over the signature of its president, Irving D. Spigner, informed Local 455 that the companies listed on the letter had authorized the Association to acknowledge Local 455's letter of intention to terminate the existing collective-bargaining agreements and further stated that the Association would be happy to meet with Local 455 at an early agreeable date. The list of membership included in that notification by the Association included, among others, all of the named Respondent-Employers in the instant proceeding. There were 25 such Employers listed.

Thereafter, three or four bargaining sessions took place during the month of June following the receipt by Local 455 from the Association of authorizations, in writing, from each of the Employers who desired to have the

Association bargain on their behalf for a single association-wide contract and a single association-wide unit of all production and maintenance employees, including plant clericals. However, there were four Employers whose authorizations Local 455 received, whom Local 455 protested, inasmuch as Local 455 had already commenced bargaining individually with these four Employers before notification from the Association or, at least, before authorizations were received for these four Employers. These four Employers were Balfour Door Co., Weatherguard Service, Inc., Esco Iron Works, and Herbert A. Penner & Co., Inc. Accordingly, Local 455 never conceded that these four Employers were part of the Association for purposes of bargaining with Local 455, and eventually, Local 455 did enter into separate agreements with these Employers.

As stated, during the month of June 1975, there were four negotiating sessions. Despite the fact that at the very first meeting, the date of which is not made clear in the record, Local 455's representatives protested the appearance on the Association's negotiating committee of Walter Balfour of Balfour Door Co. with whom Local 455 contended it did not have to deal as a member of the Association, after the initial protest, which lasted but for a short time, Balfour attended all four sessions as a member of the Association's bargaining committee. During these four June 1975 bargaining meetings, the discussion, for the most part, concerned some 56 differences between what the members of the Association had received as independent contracting parties in the expiring contracts with Local 455 and what Allied member had received in their association-wide contract which also was due to expire on June 30, 1975.[4] Likewise, during that period of

[4] From credited portions of the testimony of Joseph Colavito.

time, although the Union did submit a proposed stipulation as its initial offer in negotiation, such stipulation did not include any set figure for wages or any dollar figure for fringe benefits. According to Local 455's president Colavito, whom I credit in this instance, the entire first session was devoted to these 56 differences between the so-called independent contractors and Allied agreements and the desire of the Association to acquire for its members the benefits contained in these 56 items which were part of the association-wide contract with Allied. The other three bargaining meetings in June also were concerned, in large measure, with this problem. However, both parties seemed to have been adamant in their positions with regard thereto, the Association representatives desiring an outright grant of all of these 56 points whereas the bargaining representatives, principally President Colavito, of Local 455 desired to discuss each one separately and definitively. In any event, no agreement of any substance was reached either with regard to these 56 items or to the Union's contract submission. As a result, the employees of the Employers who were members of the Association, and of all other nonmember Employers whose contracts expired on June 30 stopped work and went out on strike. Thus, there was a general strike throughout the entire industry against all employers, regardless of their affiliation or nonaffiliation with multiemployer bargaining associations, who had not signed contracts with Local 455 and whose employees were represented by that labor organization.

For reasons best known to the parties, but not explained in the record, there were no bargaining meetings during the month of July 1975.

However, almost immediately after the beginning of the strike, Local 455 circulated a modification of its orgi-

nal demands to all of the Employers in the industry, even including some of the members of Allied. In late August 1975, at the first meeting after the strike began, the revised proposal was given to the Association's representatives. It is probable, however, that members and officials of the Association were aware of this revised proposal before that meeting. It was the first submission by the Union, although only in a short, stipulation form, which contained exact wage proposals by Local 455 inasmuch as it modified section 24 of the expired contracts to present wage increases of approximately 10 percent for most of the classifications of employees included in the multiemployer production and maintenance unit of the employees of members of the Association. Additionally, there were other modifications from the original, June demand.[5]

It should be noted further, that although Local 455's original proposal in June did not contain specific wage demands, or specifics for welfare fund or other fringe benefit contributions, according to credited testimony of Colavito, Local 455 during the last meeting before the strike did inform the Association's bargaining committee that it was seeking a 15 percent wage increase from Allied. Because of what had always been the custom of the industry, this should have indicated to the Association's negotiators that this percentage would be the maximum increase which would be demanded of the Association members. Additionally, at this same final meeting before the strike, Local 455's representatives did inform the Association's representatives that the fund increase demands would be limited to a maximum of 5 percent.

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[5] It serves no purpose at this juncture to recite these differences. It is sufficient to note that Local 455 did move from its original position.

In August, during the hiatus in bargaining between the last meeting in June and the August meeting, a private discussion was held at a hotel on Long Island between Association President Spigner and Local 455 President Colavito.

However, before this meeting occurred, and probably during the month of July, Spigner had a conversation with a union business agent, Bill Matienzo, wherein Spigner told Matienzo that the whole matter could be settled very easily by Colavito on behalf of Local 455 by offering to the Associaton the same terms which had been offered to Allied. Spigner told Matienzo that this would create a climate of settlement throughout the entire industry. Matienzo then indicated that Colavito had told him that the Association would be the "hard nut" in the settlement of the entire matter. Spigner told Matienzo that this was not so; that in return for the Allied terms on the 50 or so differences heretofore alluded to, the Association had, at the final meeting in June offered to Local 455 a substantial increase in wages.

In any event, through the services of the New York State Mediation Service, the August meeting took place. However, evidently, the meeting between Colavito and Spigner occurred before that meeting.[6]

During that person to person meeting, Spigner mentioned that one of the Association members, Dextra Industries,

[6] The record does not specifically state the exact order in which these events occurred, except that Colavito indicated in his testimony, upon a leading question by counsel for the General Counsel, that the meeting between Colavito and Spigner took place on August 25. This would place it about the same time as the Association and Local 455's negotiating session.

Inc., had signed a contract with the Union. The conversation became quite heated at that point, Spigner telling Colavito that unless Local 455 agreed to the Association's bargaining requests, probably referring to the 50 some odd items, the Association would have the Teamsters replace Local 455 and that the Teamsters would, according to Colavito, "crack heads." Spigner added that three of the members of the Association were ready to sign up with the Teamsters, probably referring to Local 810, the Charging Party in the complaint against Local 455 in the instant proceeding.[7] Although there might have been some slight errors of recall with regard to exact language used by Spigner, I conclude that, for the most part, the conversation during the meeting was much as related above.

Although the Association spokesmen had insisted, in the June 1975 meetings, before all else was discussed or

[7] I have credited Colavito's version of this conversation, not only by reason of my observation of both Colavito and Spigner, but also because Spigner, in testifying, specifically admitted that there was a discussion of the Teamsters and also because he further stated in his testimony, while denying the statements set forth above, that he did take umbrage with Colavito concerning the fact that Local 455 had entered into direct negotiations with Dextra. I also note, in not crediting Spigner, that the latter testified that Colavito, during the conversation, brought up the matter of Local 810 or the Teamsters. Spigner further testified that he did not know anything about Local 810 or the Teamsters as such, or that the Teamsters had approached any of the members of the Association. However, elsewhere in this Decision, I find that labor counsel to the Association, not counsel representing the Association in the instant proceeding, had spoken of the possibility of going into another union and had, in fact, discussed Local 810 with the Association-members at meetings attended by Spigner. For these reasons, I credit Colavito's versions of the conversation over Spigner's version and Spigner's denials that he made threats to Colavito concerning Teamsters or Local 810.

agreed upon, that Local 455 give them the 50 odd differences between the Allied contract and what had before been called the "independent" contracts, during the final June meeting, they also demanded a reduction in wage rates and reductions in contributions to the various funds and the reduction of all benefits in addition to the changes of the contract provisions which Local 455 considered objectionable. Under these circumstances, at that last meeting, with the Union insisting upon certain wage increases, the parties were quite far apart. However, during the late August negotiating session, which probably followed the private discussion, as related above, between Colavito and Irving Spigner, Local 455 set forth and sought to discuss in detail the proposal that it had circulated immediately after the strike began to the independent Employers who were not members of the Associaton, but of which, the record reflects, the Association members were apprised. However, the modification and reduction in Local 455's wage demands, and its suggestions regarding other matters, were not sufficient to satisfy what the Association's representatives considered necessary capitulation on the part of Local 455, and the meeting accomplished little or nothing. However, inasmuch as this suggestion on the part of Local 455 a move downward from its original position taken at the close of the last meeting in June, I find and conclude that at that point, if, indeed, the June meeting had ended in impasse, such impasse was then broken and no longer existed.

As a matter of fact, the record reveals no substantial progress from that point on, including the parties last negotiating session sometime in January 1976 as hereafter related. It is unclear from the record how many bargaining sessions took place after the late August 1975 meeting until that January 1976 meeting. Colavito testified, pur-

suant to questioning by the General Counsel, that there were about five and that these meetings were brought about and attended by representatives of the New York State Mediation Service. However, the record is not clear as to what exchanges occurred at these meetings, nor does the record show whether there was any movement from the positions taken by the parties during the late August 1975 meeting.

In any event, by letter dated January 16, 1976, the Association, over the signature of Association President Irving D. Spigner, sent a letter addressed to John Zito, secretary of Local 455, which read as follows: "The executive officers of the companies named below, as provided for in the bylaws of our Association, have withdrawn any authorization previously given us, written, oral or implied, which impowers the independent association to engage in collective bargaining or conclude any agreement on their behalf with Shopmen's Local Union No. 455." The letter went on to list 19 individual Employers who were withdrawing their authorization. These companies were, in order, Achilles Construction Co., Inc., herein called Achilles, Bay Iron Works, Inc., herein called Bay, Esco Iron Works, Inc., herein called Esco, Greenpoint Ornamental and Structural Iron Works, Inc., herein called Greenpoint, Heuser Iron Works, Inc., herein called Heuser, Ikenson Iron Works, Inc., herein called Ikenson, Koenig Iron Works, Inc., herein called Koenig, Kuno Steel Products Corp., herein called Kuno, Long Island Steel Products Co., Inc., herein called Long Island Master Iron Craft Corp., herein called Master, Melto Metal Products Co., Inc., herein called Melto, Mohawk Steel Fabricators, Inc., herein called Mohawk, Paxton Metalcraft Corp., herein called Paxton The Peelle Company, herein called Peele, Roman Iron Works, Inc., herein called Roman, Spigner and Sons Structural Steel Co., Inc., herein called Spigner, Trojan

Steel Corp., herein called Trojan Weatherguard Service, Inc., herein called Weatherguard, and G. Zaffino and Sons, Inc., herein called Zaffino.[8]

In the letter's last paragraph, Spigner stated that the Association no longer considers the named Employers to be part of the bargaining group. However, significantly, Spigner did not state that any employer whose name was not listed in that letter was no longer a member of the bargaining group nor did the letter state that the Association was no longer bargaining, or could no longer bargain, on behalf of its members who had not withdrawn.

In reply to the said letter, Colavito, on January 20, 1976, wrote to the Association acknowledging receipt of the January 16 letter, and stated, in his letter, that Local 455 entered into the agreement to bargain with the Association for the Employers the Association represented, and that there was no understanding that the arrangement was unilateral, which would permit the Association members to withdraw from multiemplayer bargaining at any time without the Union's consent. Colavito went on to state that Local 455 must insist that any agreement between the Association and Local 455 would be binding upon all of those Employers covered by the original agreement and that bargaining in good faith be carried out by the Association and its members. Colavito also stated that it was understood by Local 455 that a meeting was to be set up at the New York State Mediation Board on Friday, January 23, 1976.

This meeting was initiated by a telephone call from the Mediation Service stating that Dan Doyle, president

[8] With regard to these Employers, Bay, Esco, and Weatherguard are not mentioned as Respondents in this proceeding inasmuch as they signed separate agreements, along with others, as hereinafter related, and were never considered by Local 455 as part of the Association. This is also true, as noted above, of Balfour Door Co.

of Brakewell Steel Fabricators, Inc., herein called Brakewell, desired the meeting. Brakewell had not withdrawn its authorization. Doyle was also a member of the Association's bargaining and negotiating committee from the beginning.

The meeting took place, as scheduled, at the State Mediation Service on January 23. Present beside the union representatives were Doyle, Seymour Kaplan, president of Carlin Manufacturing Co., Inc., also one of the original members of the Association, two of the Naiztat brothers of Naiztat Iron Works, Inc., herein called Naiztat, also original members of the Association. For Local 455 were Colavito and Kenneth Mannsman, a member of Local 455 Executive Board.

At the meeting, after a number of hours, an agreement was ultimately arrived at with those present. During the following weekend Bay Iron Works, Inc., signed the agreement as did Wortman Iron Works, Inc. Accordingly, five Employers signed the agreement. It should be noticed that Uydess, of Bay Iron Works, Inc., had also been on the negotiating committee of the Association. It should be noted that all of these companies who signed either on January 23, 1976 or within a few days thereafter, as hereinabove mentioned, signed their names as "Members of the Association."

It should also be noted that at the meeting of January 14, the last meeting held between the entire Association bargaining committee and Local 455, the representatives of the Association informed Colavito and other representatives of Local 455 that if the Association could be granted the same contract which had been given to Allied shortly before that time, and of which the Association was apprised, the parties could probably reach an agreement.

However, Colavito and the representatives of Local 455 rejected this demand. It was thereafter that the Association members met and a large majority decided that the withdrawal letter of January 16 should be addressed to Local 455.

However, as noted, although Bay Iron Works, Inc. withdrew and was included in the letter of withdrawal of January 16, it joined in the negotiations held later in January and was one of the five signers of the stipulation or agreement on that date or soon thereafter. Additionally, Respondent Heuser and Respondent Trojan, although among the Employer-members who had withdrawn on January 16, also eventually signed stipulations or agreements. Local 455 thereafter requested each of the other members of the Association, who withdrew authorization, to sign and honor the agreement reached with the original five signers, but they had continued to refuse to do so up to the date of the hearing herein, and have continued to refuse to meet with and bargain with Local 455.[9] It is apparent, that with but, perhaps, a few minor variations, the contracts which were signed were virtually the same contracts which the five original signers executed. However, the capacity in which each Employer-member, named above, signed, is discussed later in this Decision.

Thus, the foregoing constitutes the situation with regard to the bargaining as it is presented by the record herein.

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[9] From testimony of Colavito and other union business agents. However, it should be noted, that Respondent Heuser signed the stipulation only after 2 months subsequent to the signing by the others and after at least two visits to Heuser by union business agent Meyer Tessler. Tessler's testimony with regard to that signing is credited.

C. *The Local 810 Relationship with the Association*

Reference has been made, above, to the fact that a labor relations advisor, not counsel to Respondent-Employers of the Association in the instant proceeding, had spoken to the members of the Association, and others, concerning the fact that Local 810 and, perhaps other unions, might be interested in representing the employees of the Association members. This was brought about because of the apparent disaffection of the Employers involved with Local 455. The relationship between these individual Employers, Respondents herein, and Local 455 over a period of some years past had been deteriorating by reason, at least to some extent, by the refusal by Local 455 to grant to these independent Employers economic opportunities which they believed would be as advantageous as those granted in Local 455's negotiations over over the period of years with the members of Allied. It is well to note, although not as an excuse for what later took place among the Respondent-Employers herein, that the building and construction industry, during the period of time with which the facts of this proceeding are concerned, was in a depressed state, especially in the New York City area, and that a number of firms had gone out of business. In fact, some of the Respondent-Employers herein had no working employees at the time of the strike on June 30, 1975. For example, Respondent Ikenson, which formally had nine employees, had been forced to lay off all of its employees before the negotiations involved in the instant proceeding began and, moreover, up to the date of the hearing herein had not recovered sufficiently to rehire any employees, inasmuch as that firm was un-

able to procure any business. The same was somewhat true of Respondent Spigner and Sons.

Thus, by reasons of the foregoing pressures, the Association, as representative of its members, retained a labor relations expert, attorney Herman Brickman, who has been the arbitrator named in the labor contracts of Employers in the industry whose employees were and are represented by Local 810 and who had collective-bargaining agreements with Local 810. At a meeting or, perhaps, more than one meeting, subsequent to the beginning of the strike, which meeting or meetings were attended by members of the Association as labor relations clients of Brickman, and which meetings were also attended by other independent Employers who were not members of the Association, and not clients of Brickman, Brickman stated that there were other unions interested in expanding their membership among employees of Employers in the industry. This meeting, or meetings, took place some time in October 1975. At one such meeting, Dennis Silverman, president of Local 810, was invited to address those present at the meeting. Silverman explained to those present the terms that Local 810 could offer to the Employers, what it could do for the employees, explaining the advantages that Local 810 could give to the Employers involved relative to pension plans, retirement plans, and other terms and conditions of collective bargaining. This, of course, in point of time, was approximately 2 to 3 months before the letter of January 16 in which the Association informed Local 455 that a majority of its members were withdrawing their authority to have the Association bargain on their behalf. Additionally, at one of the so-called "open meetings," at which others in addition to Brickman's clients were present, Brickman stated that with regard to Local 810, progress

was being made and that the men, presumably the employees, were being contacted by Local 810.[10]

Among other matters which Brickman informed the Employer Association members was that other labor

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[10] All of the foregoing with regard to the meetings with Brickman, and with Dennis Silverman, constitutes an amalgam of the testimony of Seymour Kaplan, who was treasurer of the Association at the time of the events related and was an officer of Carlin Manufacturing Co., Inc., one of the original Employer-members of the Association, not a Respondent herein, which company signed an agreement with the Union after January 16, 1976.

At the hearing herein, counsel for Association and Local 810 objected on the basis of confidential communication to Kaplan's testimony with regard to what occurred at the meetings at which the members of the Association were addressed by attorney Brickman. However, the testimony hereinabove related was permitted because the meetings at which this information was set forth was attended by other than the members of the Association and who were not clients of Brickman. Thus, in those instances, any claimed atorney-client privilege was waived by reason of the fact that the meetings were attended by others than clients of Brickman. Additionally, as will hereinafter be related, at least some of the information at those meetings related by the Association's attorney, Brickman, was advice tending to inform the Association members that other unions were interested in organizing their employees at a time when such employees were members of Local 455. Accordingly, the advice that was given was related to, or could have been the sparking point, for activity which in other parts of this Decision is found to have constituted violations of Section 8(a)(2) of the Act. Inasmuch as the advice of the attorney would seem to have tended to persuade the Employers to commit violations, it would seem that under the common law rule as adopted in the new Federal rules of evidence, Section 501, effective July 1, 1975, Kaplan's testimony was admissible. It is well established that at common law, the attorney-client privilege could not be claimed where the advice of the attorney was to break the law in some manner. It should be noted in connection with all of the foregoing, that counsel for the Association and the Respondent-Employers in this proceeding is not Brickman and is not in any way associated with him.

unions had no objection to organizing the employees of the Association members. After a meeting with Brickman, Ed Peelle, chairman of the Association negotiating committee, went to the office of Local 810 and obtained a copy of Local 810's standard industry contract. Peelle reviewed it with Dan Doyle, another member of the negotiating committee and, together, at a later meeting of the Association, they informed the Association members regarding the provisions of the sample 810 contract.[11]

D. *The Unlawful Assistance and Support of Local 810*

It is evident from the record, as hereinafter related, that a number of the members of the Association, despite the fact that the vast majority of their employees joined the Local 455 strike on July 1, 1975, and remained loyal to Local 455, made efforts to induce their employees to change their allegiance from Local 455 to Local 810. In fact, some of these employees not only threatened to close their plants in the event the employees did not become members of Local 810, but also executed collective-bargaining agreement with Local 810 even before the January 16, 1976 withdrawal from multiemployer bargaining. The activities of these Employers in support of and in giving assstance to Local 810 are set forth below.

1. Greenpoint Ornamental and Structural Iron Works, Inc.

At approximately Labor Day of 1975, Greenpoint President George Geuther, Jr., invited some of his picketing employees into the office of his plant and informed

[11] From the uncontroverted testimony of Peelle.

them that he would have nothing further to do with Local 455 and if the employees wanted to work for him they would have to do so as members of Local 810. Geuther further informed his employees that their pension contributions would travel with them and they would lose nothing by transferring their membership from 455 to 810. In fact, Geuther repeated these statements to several of his employees on a number of occasions between Labor Day and January 16, 1976, while the said employees were visiting the Greenpoint plant as pickets on behalf of Local 455.

With regard to individual employees, Geuther told employee Adam J. Gontorski that he had signed a contract with Local 810. In December 1975, Geuther offered to take Gontorski and other employees to Local 810's office. He also stated that if they would not sign up with Local 810 he would replace them with 810 members. Around November 1, employee Joseph Matzell received a registered letter from Greenpoint in which he was told to come back to work by November 10 or be discharged. In January, Matzell did go back and was told by George Geuther, Jr. that he had no job. During this period of time, Geuther also stated to Matzell that he would never sign a contract with Local 455. Employee Salvatore Gulino had a number of conversations with George Geuther, Jr. in September, October, November and December of 1975, sometimes alone, and sometimes with other employees present. Geuther always attempted to convince the employees and Gulino to change unions. When Gulino refused saying that he did not want to lose his pension, Geuther informed him that the law provided that the pension would go with him. Geuther also offered Gulino a 10 percent increase in salary if the latter would join 810 and come back to work. Upon Gulino's repeated refusals, Geuther told Gulino that the latter had better look for another job.

In additon to Greenpont employees, Frank Hernandez, an executive board member of Local 455 visited Greenpoint on November 10, 1975, along with a shop steward named Sheeran from another Employer's shop. They engaged George Geuther, Jr. in a conversation. Among the statements made by Geuther to Hernandez and Sheeran was that Geuther would never sign with Local 455 again and that Greenpoint was not the only Employer thinking the same way.

It is undisputed in the record that Greenpoint signed a collective-bargaining agreement with Local 810 on November 20, 1975 and, presumably, has been operating its shop under that contract continuously since then.[12]

2. Long Island Steel Products Co., Inc.

At the time the strike began, Respondent Long Island employed seven workers, all of whom were members of Local 455 and all of whom joined the strike on July 1, 1975. Sometime after the meetings of the Association with attorney Brickman and Local 810's president Silverman, Long Island's president, Irwin Davidson, in early December 1975, telephoned his seven striking employees and invited them to meet with him at the company office. The employees responded and met with Davidson and Long Island's vice president, Nathan Steinfeld. Both Davidson

[12] From the uncontroverted testimony of the above-named employees. I credit such testimony not only because it went uncontroverted on the record but also because George Geuther, Jr., in testifying to other matters as hereinafter related, did not in any manner deny any of the testimony of the employees above or of Local 455 executive board member Hernandez.

and Steinfeld, at the meeting, urged the employees to abandon Local 455 and join Local 810 or, in the alternative, go nonunion, assuring them that if they did so they would have steady employment, but if they did not, the Company would close its doors. Davidson further told the gathered striking employees that a transfer of membership to Local 810 would insure them of their pensions and they would receive the monies already paid into the Local 455 pension fund. Davidson also stated that Long Island would never again sign with Local 455. When employee Michael Frenna expressed his disapproval and stated his refusal to joint Local 810, Davidson told Frenna, on two separate occasions, that the latter had better look for another job.

Approximately a month after the first meeting with the employees, Davidson again called a meeting of the striking employees and some of them attended. Again the employees were urged to join Local 810 and the same promises of continued pension and vacation fund benefits was made in the event that they transferred their allegiance to Local 810. Also, Davidson repeated the threats to close the Company's doors if the employees did not conform with his desires.

Despite the fact that none of its striking employees consented to abandon their membership in Local 455, and even before the second meeting with the striking employees, as set forth above, Long Island entered into a collective-bargaining agreement with Local 810 on January 6, 1976, which collective-bargaining agreement was executed by President Irwin Davidson. Additionally, Davidson accompanied at least two employees to the Local 810 office in Manhattan and remained present with them and participated while they were told by two apparent

agents of Local 810 the benefits they would receive if they became members of that union.[13]

3. Master Iron Craft Corp.

In the middle of February 1976, striking employee Morris Waldman, went to the shop of Master Iron Craft and spoke to Murray Scheiner, a partner in that firm, and asked Scheiner for work. Scheiner refused, saying he could not take Waldman back because Master Iron Craft belonged to another union, Local 810. As a matter of fact, Master did sign a contract with Local 810 on

[13] From the credited uncontested testimony of Long Island employees, Harry Bender, James Flemming, Michael Frenna and Erdin Dill. Although Bender and other employees of other Respondent-Employers, as hereinafter related, were unable to identify by name the individuals who spoke to them at various times at Local 810's office on 15th Street in Manhattan, from the context in which these visits to the Local 810 office arose, and the timing of the visits within a brief period after Local 810 President Silverman spoke at the Association meeting, I infer that the individuals who spoke to the various employees of a number of the Respondent-Employers at Local 810's office were agents of that union authorized to do so. It is unreasonable to assume that the Respondent-Employers' officials, who brought their employees to Local 810's office, did so for the purpose of having the employees meet some unauthorized clerk without knowledge of the Union's operations, inasmuch as the individuals who addressed the various employees explained in detail the operations and proposed union benefits which would enure to the employees if they became members of Local 810. Additionally, some of the employees who testified, although unable to state the names of the Local 810 officials who spoke to them, described the officials in some detail. Accordingly, I find and conclude that these employees were addressed at Local 810 office by union officials and that, therefore, Local 810 did participate in seeking to induce the employees to join that union.

January 28, which bargaining agreement was signed on behalf of Master Iron Craft by Scheiner.[14]

4. Paxton Metalcraft

Antonio Monturo and Arturo Palazzo, both employees of Paxton who struck on July 1, 1975, made attempts in January 1976 to return to work at Paxton. Thus, in mid-January, Monturo received a telephone call from Leo Mayer, president of Paxton to come down to the shop. One day later, Monturo visited with Mayer at the shop. Mayer asked Monturo to change unions and to come back to work. Mayer told Monturo, when the latter demurred, to think carefully, otherwise Monturo could be replaced unless he changed his union affiliation to Local 810.

Palazzo, who needed work badly, on January 22, 1976, knocked on Paxton's door. The door was opened by Leo Mayer who invited Palazzo inside. Mayer informed Palazzo that Local 455 was no longer the company union and that Local 810 was the company union. He further stated that if Palazzo came back to work, after 1 month, Palazzo would be obligated to join Local 810. Mayer told Palazzo that he had already signed a collective-bargaining agreement with Local 810. The record actually shows that on December 15, 1975, Paxton signed a collective-bargaining agreement with Local 810 which agreement was signed by Irving Melnick, Paxton's treasurer.[15]

[14] I credit Waldman's uncontroverted testimony in full. Murray Scheiner, in testifying to other matters, did not deny the above.

[15] All of the foregoing from the credited testimony of Monturo and Palazzo. Although Mayer and Melnick both testified to other matters, neither of them disputed any of the foregoing related by the two employees. Additionally, with regard to the signing of the collective-bargaining agreement with Local 810, the parties stipulated to that fact at the hearing.

5. Roma Iron Works, Inc.

Roma's president, Edward Romanelli, spoke to several of his employees who were on strike, upon a number of occasions regarding Local 810. Of the nine employees who went out on strike, four testified. Thus, in November 1975, Romanelli called employee Lorenzo Ruggieri at the latter's home and asked him to come to the company office. Ruggieri complied and when he arrived at the office he found present there, Romanelli and Frank Carpentiere. Although Roma is a corporation, it is evident that Romanelli and Frank Carpentiere are partners. Also present, besides Romanelli and Carpentiere, was an unnamed bookkeeper. Romanelli and Carpentiere asked Ruggieri to join Local 810, stating they could not afford to stay with Local 455. They also informed Ruggieri that they would close the shop rather than sign with Local 455 and would never sign with Local 455. In January 1976, Romanelli called Ruggieri again and similar conversation occurred, both on the telephone and in the office. Romanelli again urged Ruggieri to join Local 810 and further stated that Roma would never sign with Local 455. At that time, Romanelli also offered to have Ruggieri sign a designation card for Local 810. When Ruggieri indicated that he was not sure that he wanted to sign with Local 810, Romanelli offered to take him down to the Local 810 office. Ruggieri consented. At the Local 810 office, Ruggieri was introduced by Romanelli to a man he could not describe. This man was not Union President Silverman. In the discussion at the Local 810 office, with regard to the benefits which Local 810 offered, Romanelli participated and informed Ruggieri that the latter would take with him into Local 810 all of the benefits he had accrued with Local 455.

Employee Alexander Farkas experienced a similar type of inducement from Romanelli. During the summer

of 1975, while Farkas was on picket duty at Roma's premises, Edward Romanelli engaged him in conversation. During that conversation, Farkas asked Romanelli to sign Local 455's proposed collective-bargaining agreement. Romanelli answered that he wanted to "join" Local 810 and would not sign with Local 455. At that time he showed Farkas a "stipulation" from Local 810, which stipualtion listed the benefits the men would receive if they joined Local 810. Romanelli assured Farkas that the latter would not lose any benefits such as pension and vacation fund which Farkas had already accrued under the Local 455 benefit's plans. Again, in early January, Farkas heard that Allied, the other collective bargaining multiemployer association, had signed a collective-bargaining agreement with Local 455. He thereupon proceeded to the shop to talk to Romanelli and ask the latter if Roma would sign the same agreement so that the men could return to work. Present during that conversation were Carpentiere, Romanelli's partner, and the same bookkeeper. Romanelli answered, in short, that he would never sign with Local 455 and wanted to join Local 810. However, so far as the record in the present proceeding indicates, Roma did not sign with Local 810.

Michael Dynia, another employee, also had a similar experience with Roma's president, Romanelli. In November 1975, Romanelli called Dynia at his home on the telephone and asked if Dynia would like to sign a card and join another union. Romanelli wanted Dynia to go to the office where Romanelli would then drive him with others to the other union's office. Dynia consented, went to Roma's office and, with Romanelli driving, they proceeded to the office of Local 810 on 15th Street in Manhattan. During these conversations, Romanelli also told Dynia that he would have to close the shop if Dynia stayed with Local 455.

One other employee, Mauel Ruiz, while on the picket line in July 1975, was approached by Romanelli who told him "If you guys keep striking with 455, I have to go out of business."[16]

6. Trojan Steel Corp.

At the end of August 1975, Arnold Feinglass, president of Trojan approached striking employee Mario Plaza while the latter was on the picket line and invited Plaza to come back to work. Plaza, in effect, answered in the negative, stating that he would not return until Feinglass signed a collective-bargaining agreement with Local 455. Feinglass then told Plaza that as long as the latter was a member of Local 455, he would never be permitted to return to work for Trojan. Feinglass further told Plaza that Trojan would never sign a collective-bargaining agreement with Local 455.[17]

However, despite the threats made by Feinglass, Trojan signed with Local 455 as hereinafter related.

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[16] All of the above from uncontested testimony of employees, Ruggieri, Farkas, Dynia, and Ruiz. No official from Roma testified at the hearing. Accordingly, the testimony of the employees being uncontroverted, it is credited.

[17] The testimony with regard to the threats and the refusal to sign with Local 455 given by Plaza is credited in all respects. Although Feinglass denied that he ever threatened any employee, he did admit that he might have told his employees that he would never sign with Local 455. I credit Plaza over Feinglass' denial not only by reason of my observation of these two witnesses, but also by reason of the fact that Plaza has returned to work for Trojan and, therefore, is more likely to have told the complete truth with regard to the occurrences inasmuch as his employment with Feinglass continues.

7. G. Zaffino and Sons, Inc.

Zaffino was evidently having financial difficulties even before the strike started. It had laid off a number of employees within the month of June 1975 and had, in fact, laidoff some employees as early as April of that year. Thus, for a number of months, Zaffino had no contract with its employees. However, in January 1976, probably during the middle of the month, employees Junius M. Howell and Joseph Riess, and probably other employees, were called by Bruno Zaffino's secretary and asked to come to a meeting at Zaffino's office. The meeting took place on a Saturday. Bruno Zaffino told the employees attending the meeting that Local 455 was "pushing him out, money wise" and asked the employees to join Local 810. He told the employees that if they would join Local 810, they would retain their pension fund for retirement and a number of other benefits. He further stated he would have to close up if he had to stay with Local 455, as it was costing him too much money. Additionally, he showed Joseph Riess, and the others, Local 810 literature (probably a proposed collective-bargaining agreement) distributed to the various Employer-members of the Association by Local 810. Two days after that meeting, Bruno Zaffino again called employee Howell on the telephone and asked him if the latter would like to take a ride to the Local 810 office. Howell answered that he would rather stay with Local 455. Zaffino then told Howell, "You better watch your ass, we are going to watch ours."

Shortly after that, probably within a few days, some of the laid-off striking employees were gathered in front of the home of employee Roger F. Williams in New Rochelle, New York. With Williams were Robert Catalano, Joey Zaffino, an employee although one of the Zaffino

family, and Joe Cassara. Bruno Zaffino drove by, stopped, and invited the employees to go with him to the Local 810 headquarters. Having nothing to do and being curious, the employees accepted and were driven down to the Local 810 office on 15th Street in Manhattan. The Zaffino facility was located in New Rochelle.

When they arrived at the Local 810 office, the employees were taken into a large room and introduced to two men whose names the witnesses could not recall. However, they did describe, to some extent at least, one individual as being a short, stocky man chewing a cigar, and with short red hair. Local 810 representatives showed the employees pamphlets containing Local 810's pension plans, vacation plans and other fringe benefits. There was further discussion of other matters with which Local 810 was interested with regard to Zaffino's employees. Finally, after this discussion which lasted for some time, the men were driven home by Bruno Zaffino.

It should be noted, however, that none of these employees were told by Zaffino to join Local 810. He only threatened that if the employees retained their membership in Local 455, as noted above in his conversation with employee Howell, that they would, inferentially, lose their jobs.

At least one of the booklets which were shown to the employees of Zaffino, while at the headquarters of Local 810, was a booklet entitled Welfare Plan No. 45 published by Local 810 and showing its address at 10 East 15th Street, New York, New York. It is unnecessary to detail any of these welfare plans at this point inasmuch as it would serve no purpose but they run the gamut from a dental plan to life insurance, to medical and surgical benefits.

However, despite Zaffino's warnings, Zaffino never did enter into any formal bargaining agreement with Local 810.

In connection with Zaffino, Bruno Zaffino testified that although at one time, in the period before the events with which this proceeding is concerned, he had been an officer of Zaffino and Sons, he was, at the times pertinent hereto, merely the office manager. It is presumed that this testimony was presented for the purpose of showing that, in any event, Bruno Zaffino had no authority to speak on behalf of Zaffino and Sons and, furthermore, was not authorized to take the employees down to Local 810's office. However, it should be noted, that at the Saturday meeting with the employees which occurred in January 1976, other members of the Zaffino family were present, and no one in that group told the employees that Bruno Zaffino lacked the authority to do what he did. Nor did they protest Bruno Zaffino's actions at any time and, in fact, stood by while Bruno Zaffino acted as the company spokesman.

Although Bruno Zaffino testified he did not invite the men down to the Local 810 office but, rather, that he was driving by and they volunteered without his asking to go down to the office, I credit the testimony of the employees that Bruno Zaffino did, indeed, invite and persuade the individuals involved to go to Local 810's office with him.[18]

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[18] All of the above testimony of the employees of Zaffino whose names are set forth above is hereby credited over the denial of Bruno Zaffino. I especially observed Bruno Zaffino's attitude as he testified and am convinced from his demeanor on the witness stand that he was less than candid, especially with regard to the denials that he invited the employees down to the Local 810 office. Accordingly, where Zaffino's testimony is in conflict with the testimony of the employees of Zaffino and Sons, I credit the employees' testimony over that of Zaffino.

Decision

8. Other Employers who signed with Local 810

In addition to the foregoing, Respondent-Employer Melto, on December 22, 1975 entered into a collective-bargaining agreement which was signed by Bernard Liebman, president of Melto. On January 9, 1976 Mohawk signed a collective-bargaining agreement with Local 810 by Warren Reis, president. On January 30, 1976 Koenig signed a collective-bargaining agreement wth Local 810 by Sol Leistner, president. On February 17, 1976, Cervenka signed a collective-bargaining agreement with Local 810 signed by George Cervenka, presumably the president. Received in evidence, additionally, is a collective-bargaining agreement between Roman (not to be confused with Roma) which was executed on November 18, 1975 between Roman and Local 810. It was stipulated at the hearing herein that all of the collective-bargaining agreements entered into between the Respondent-Employers who signed with Local 810 are virtually identical and that the grievance and arbitration provisions contained therein name attorney Harry Brickman as the arbitrator with regard to matters arising out of and pursuant to the said collective-bargaining agreements.

It was further stipulated that in the case of Koenig, there are six additional signatures affixed in addition to the president of that company. These were probably all employees of Koenig at the time the agreement was executed and, further, were all employees of Koenig before the strike began at which time they were members of Local 455. Further, with respect to Respondent-Employer Mohawk, the contract bears two additional signatures to that of the president of Mohawk. There is nothing in the record to show who these individuals were, but presumably they were employees of Mohawk at the time of the signing.

Decision

It should also be noted that all of the agreements in addition to being identical in other respects, have the same expiration date, October 5, 1978.[19]

9. Conclusions with regard to assistance

There can be no doubt, and I so find, that the attempted inducement by Respondents Greenpoint, Long Island, Master Iron Craft, Paxton, Roma, Trojan, and Zaffino to have their employees join and become members of Local 810, and to abandon their affiliation with Local 455 and, indeed, in some instances, to actually drive their employees to Local 810's headquarters in order to further induce the employees to join Local 810 and abandon Local 455, constituted unlawful assistance and support to Local 810 and were undoubtedly violations of Section 8(a)(1), (2) and (5) of the Act. Activity of this nature has long since been held by the Board to constitute such violations.[20] The unlawful assistance and support of Local 810 is self-evident from the recited facts. Additionally, the inducement to the employees to join Local 810 and thus to abandon Local 455 constituted any undermining, or an attempt to undermine, Local 455 as the bargaining representative of these Respondent's employees which activity clearly constitutes violations of Section 8(a)(5)

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[19] Although the complaint herein alleges that Respondent-Employers Trojan and Roma entered into collective-bargaining agreements with Local 810, there is no testimony or documentary evidence or any proof whatsoever in the record that these Employers did enter into and recognize Local 810 as bargaining representative of their employees. Accordingly, I shall dismiss that portion of the complaint which alleges the execution of such agreements with regard to these two Respondent-Employers.

[20] *International Offset Corp.*, 210 NLRB 854, 855-856, *Florida Automatic Sprinkling Contractors Association*, 199 NLRB 1151, 1158; *Freeman G. Gafney, Inc.*, 205 NLRB 1012, 1016-1017; *Hopcon, Inc.*, 161 NLRB 31, 36-38, 41-43.

of the Act.[21] And this would be true even assuming, *arguendo*, that the Respondent-Employers involved lawfully withdrew from multiemployer collective bargaining.

Additionally, the entering into collective-bargaining agreements with Local 810 in the months of November and December 1975, and January and February 1976 by Respondent-Employers Roman, Greenpoint, Paxton, Melto, Long Island, Master Iron Craft, Mohawk, Koenig, and Cervenka, constitute further violations of Section 8(a) (1), (2) and (5) of the Act. As set forth earlier in this Decision, these nine Employers were among those who joined the Association which was formed in January 1975 and who desired to bargain on an association-wide basis with Local 455. Inasmuch as all of these Employers had, as independent companies, recognized and bargained with Local 455 for a number of years before the events herein, and because the collective-bargaining agreements which they had executed over the years with Local 455 contained union security provisions, when these Employers became members of the Association and authorized association-wide bargaining, the unit appropriate for collective bargaining then became an association-wide unit and during the period involved in this proceeding this association-wide unit was presumptively intact. Therefore, Local 455 was entitled to a continuing presumption of majority status in the association-wide unit. As hereinafter related, there is little or no reason to conclude that the situation was otherwise at the time of the execution by the above nine Respondent-Employers of the collective-bargaining agreements with Local 810. Thus, the entering into the agreements with Local 810 constituted unlawful assistance to Local 810 in violation of Section 8(a)(1) and Section 8(a)(2) and (1) of the Act, be-

[21] *Supra.*

cause Local 810, by reason of all of the foregoing, did not represent an uncoerced majority of the employees of Employers in the association-wide multiemployer bargaining unit hereby found to be appropriate. Additionally, the entering into the agreements with Local 810 constituted a further undermining of the collective bargaining position of Local 455 and, accordingly, constituted violations of Section 8(a)(5) and (1) of the Act.[22]

Over and above all of the foregoing, a reading of the Roman agreement with Local 810 reveals that the said agreement provides for union security to the extent that employees encompassed by that agreement, which is similar to the eight other agreements, must become and remain members of Local 810. Because Local 810 at the time of the entering into the agreement and at the time of the hearing herein and by reason of findings and conclusions set forth later in this Decision, did not represent an uncoerced majority at the time of the entering into the agreement covering some of the employees of the overall multiemployer bargaining unit, the signing of union security agreements constituted further unlawful encouragement of membership in, and support of, Local 810. This constituted a violation of Section 8(a)(3), (2) and (1) of the Act.[23]

An attempt to justify the entering into the collective-bargaining agreement with Local 810 was made on the

[22] See *Florida Automatic Sprinkling Contractors Association*, 199 NLRB 1151, *Automative Business Systems*, 205 NLRB 532, 534-535, *Vegas Vic, Inc.*, 213 NLRB 841-845; *Beck Engraving Co., Inc.*, 213 NLRB 53, 54-55; *Sheridan Creations, Inc.*, 148 NLRB 1503, enfd. 357 F.2d 245; *International Ladies Garment Workers Union, AFL-CIO* v. *N.L.R.B.*, 366 U.S. 731; *Wicks Corporation*, 197 NLRB 860, *Clement Brothers Company, Inc.*, 165 NLRB 698, 699.

[23] *Komatz Construction, Inc.*, 191 NLRB 846, 851; *Interpace Corp.*, 189 NLRB 132, 138-139.

record by representatives of Koenig, Mohawk, Paxton, and Master Iron Craft. According to Barry Leistner, vice president of Koenig, none of Koenig's employees went out on strike on July 1, 1975 although, admittedly, they were then dues paying members of Local 455. Although pickets appeared from time to time from July 1, 1975 until sometime in January 1976, all of Koenig's six or seven employees reported for work during that period. However, in the latter part of January 1976 Koenig's employees went out on strike. When Koenig's officials made inquiry, they discovered that the men were on strike against Koenig for the purpose of inducing recognition by Koenig of Local 810. It was after this that Koenig's president Leistner, on January 30, signed a collective-bargaining agreement on behalf of Koenig with Local 810.

Respondent Mohawk's president and sole owner, Warren Reis, testified that at the time the strike began he had approximately 10 employees. These employees who were members of Local 455 at the time remained out on strike until sometime in January 1976, approximately January 10. At that time three employees asked to return to work and Reis took back the three because his shop had been inoperative from the date of the strike until that time. The employees told Reis, when asking for work in January, that they wanted to work with Local 810. At that time they displayed to Reis union designation cards for Local 810. Reis had made no contact with Local 810 until that point in time. In fact, Reis testified that he never heard Local 810 mentioned at any of the association meetings which he attended and certainly he had never met or heard of Silverman, president of Local 810. However, after the three employees displayed the Local 810 cards, Reis went to Local 810's office and spoke to Silverman. Silverman showed him the collective-bargaining agreement that Local 810 wanted

Reis to sign. Accordingly, on that day Reis signed the contract with Local 810 and the employees subsequently returned to work. After that date, further employees were hired but there is nothing in the record to show whether they were Local 810 members or Local 455 members or nonunion employees.

With regard to Respondent Paxton, Irving Melnick, secretary-treasurer, testified that in late November or early December, after his employees who were members of Local 455 had gone out on strike on July 1, 1975, he was approached by three employees. The employees showed him Local 810 union designation cards. The employees informed Melnick and Mayers, president of Paxton, that they had spoken to an organizer from Local 810 and they were interested in becoming part of the Local 810 organization. Melnick then asked the individuals if that was what they really wanted. They answered in the affirmative and that they had all signed cards. Melnick then inspected the cards. The following day he received a telephone call from President Dennis Silverman of Local 810 and within a week thereafter, met with Silverman at Local 810's headquarters in Manhattan. Silverman described Local 810's activities, what they had to offer the employees and, in fact, showed to Melnick copies of the various plans and the prospective collective-bargaining agreement. After studying the agreement, Melnick called Mayers from the Local 810 office and they together concluded that it would be a good arrangement for them to sign the agreement. Accordingly, on that day, an agreement was signed as heretofore related. According to Melnick, he had never been in contact with, nor had spoken to, any Local 810 representative prior to the telephone call on the day after his three employees had requested reemployment and membership in Local 810.

Finally, Murray Scheiner, who identified himself only as a partner of Master Iron Craft, but who signed a collective-bargaining agreement with Local 810 on January 28 as president of that corporation, testified that as of the day the strike started, Master Craft had five employees.[24] The record does not show whether these five employees all joined the strike but, in any event, by late December and early January, three of these same employees were working at Master. In January 1976, John Michelinos, a representative of Local 810, approached Scheiner and informed the latter that a majority of Master's employees were represented by Local 810. Michelinos then showed Scheiner the cards signed by the three employees. An appointment was thereupon made and as a result, Scheiner went to the office of Local 810 president Dennis Silverman. This meeting took place on January 30 and at the end of the meeting with Silverman, Scheiner signed an agreement with Local 810. However, on cross-examination Scheiner admitted that he had five employees working at the time of the strike and an additional one in layoff status in addition to Waldman who was on temporary leave of absence at the time the strike began. None of these employees had quit or had been discharged at the time of the signing of the agreement with Local 810, so that, in fact, Local 810 represented only three out of seven Master employees, all of whom were Local 455 members when the strike began.

The record shows that all of the members of the Association at the time the strike began, employed individuals totaling approximately 250. The total number

[24] These five did not include Morris Waldman who had been laid off some time before and had asked for a voluntary leave of absence when he was recalled in June 1975. Accordingly, he was not working when the strike commenced.

of employees of Respondents Koenig, Mohawk, Paxton and Master together, at about the time they signed the agreements with Local 810, was no more than 30 individuals. The Board has established, with court approval, that where a multiemployer bargaining unit exists, and such unit employees are represented by a lawfully designated or recognized bargaining representative, before any employer can withdraw from the multiemployer association whose employees constitute the said multiemployer bargaining unit, and upon such withdrawal recognize another union as the withdrawing employer's employees' bargaining representative, such withdrawing employer, once multiemployer bargaining has commenced, *must have a good faith doubt as to the continued majority status of the union bargaining with the multiemployer group. Any doubts as to the withdrawing employer's own employees continued adherence to the first union is not sufficient to justify recognition of the second union and such recognition is, therefore, violative of Section 8(a)(5) and (1) of the Act.* (Emphasis supplied.)[25] For reasons hereinafter explicated, I find that at the time of the signing of the agreements by the Respondent-Employers with Local 810, the multiemployer bargaining unit was still intact and, therefore, the change of allegiance of 30 out of 250 employees was not sufficient to support a good faith doubt as to the continued majority status of Local 455 as the bargaining representative of the employees of the members of the Association in the association-wide unit.[26]

[25] See *Beck Engraving Co., Inc.*, 213 NLRB 53, 54-55; *Sheridan Creations, Inc.*, 148 NLRB 1503, enfd. 357 F.2d 245 (C.A. 2-1966).

[26] It should be noted that none of the other Respondents, aside from Koenig, Mohawk, Paxton and Master, attempted to show during the hearing, employee majority support for Local 810 at the time they entered into bargaining agreements with that union.

E. *Picket Line Activity and other Alleged Unlawful Activity of Local 455*

At various times, most of them subsequent to the withdrawal from multiemployer bargaining by the 17 Respondent-Employers on January 16, 1976, there occurred incidents at various Employers' establishments which went beyond activity which the Board has held to be lawful or excusable picket line conduct. Some of this activity was alleged by the counsel for the General Counsel to have violated Section 8(b)(1)(A) of the Act. Other, similar conduct, although not alleged in the General Counsel's complaint against Local 455, nevertheless is alleged by Respondent-Association and its members constituting unprotected picket line activity.

By way of background of some of this activity, although not alleged in the complaint as violations of the Act, in April or May of 1976, Ken Leistner, an employee of Koenig Iron Works, and son of President Sol Leistner, who signed a collective-bargaining agreement in January with Local 810, was met on a street corner near the entrance to the Koenig shop by Local 455 representative John Bell. After they greeted each other, Bell told Kenneth Leistner that his father, Sol, was in trouble, and Local 455 members who were working would not be let back into Local 455 without paying heavy fines. Bell stated that Local 455 was following Koenig trucks and there were ways that these trucks could be stopped. He then allegedly stated that there was a strong chance that people could get hurt and trucks destroyed but that none of this would happen if Koenig signed up with Local 455. Bell told Kenneth Leistner that the taking of such action was not up to him or, to Local 455's president, Colavito,

but he referred to some vague committee which would decide upon whether to take such action.[27]

On May 17, 1976, at about 5:55 a.m., Ken Leistner and employee Tom Rafferty were accosted by two men who stood in front of the employees' door of the Koenig facility. The spokesman for the two men was described by Leistner as tall, blonde and wearing a black beret. The man wearing the beret asked where Leistner and Rafferty were going. When Leistner answered "inside," the man in the beret said "You're not going inside, it's a 455 shop, you're on strike." Leistner answered that that must be a mistake inasmuch as the shop was a Local 810 shop. With that, the same man said that if Leistner and Rafferty went inside they would get their "ass kicked." The two men then attempted to block the door, but Rafferty and Leistner walked between them and entered.

After Ken Leistner entered the shop, he went to the garage area and rolled up the garage entrance door which opened onto the street directly in front of the Koenig shop near the other door that Leistner and Rafferty had entered. By that time, five or six individuals had gathered in front of the shop and among them were John Bell and Kenneth Mannsman, heretofore identified as a member of the Local 455 Executive Board. Although Leistner did not identify, specifically, who made the remarks that followed, merely referring to them as "they," it was stated by the individuals picketing with Bell and Mannsman, and perhaps by one of those two also, that they were not going to let any trucks out; that this was a Local 455 shop and they would "kick the shit" out of anyone trying to get into the shop. At that point several

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[27] The foregoing is merely recited as background but becomes somewhat important in consideration of part of the Respondent-Association and its members' defense in the refusal-to-bargain aspect of this proceeding.

employees from various other shops in the area passed and they were stopped and threatened by the pickets.

Approximately at 6:45 a.m. on that day, Sol Leistner parked his car on the street near the shop entrance. As he was getting out of the car to enter the shop, the man in the black beret asked him where he thought he was going. The senior Leistner asked, "Who the hell are you?" To which the man in the black beret answered, "You are not going into the shop, it's a 455 shop, you are on strike and you are going to get your ass kicked if you try to enter." The senior Leistner then addressed Bell and asked the latter what was going on. Bell answered to the effect that this was "strike time" and that no trucks would go in and no trucks would go out.

Shortly thereafter another employee, Don Hammer, came out of the subway, approached the entrance and was given the same threats. When he attempted to enter the shop, Bell and Mannsman blocked the doorway. However, the employee managed to slip behind them and enter the shop at the beckoning of Ken Leistner. Other employees entering that morning experienced similar handling by Bell, Mannsman and the pickets. Among these employees who sought to enter was one Christopher Brown. He tried to enter the shop at approximately 7 a.m. when he saw a group of men out in front with picket signs for Local 455. As he entered the shop, or attempted to do so, Kenneth Mannsman came up to him, asked him where he was going and continuously stepped in front of Brown attempting to prevent Brown's ingress to the shop. All the time that this was occurring, Mannsman was calling Brown a scab. When Brown asked why Mannsman was doing this, the latter answered that he was from Local 455 that they had been picketing for 10 months. Brown answered that this was a Local 810 shop; that Brown worked for Local 810, to which Mannsman answered that Local 810 were a bunch of scabs.

At that point, Mannsman made a gesture with his mouth as though he were going to spit at Brown. At this point Brown told Mannsman that he would knock out the latter's teeth if he spit at Brown. With this threat, Mannsman backed off and stated that there were ways of handling "punks like you, we'll get you later, something like that." [28]

In another similar incident, shortly after Richard J. Mason began employment with the Respondent-Employer Greenpoint on February 23, 1976, he was called a scab by John Bell who, at the same time spat in Mason's direction. Also, at about the same time while Mason was working with another employee of Greenpoint named Charlie, Bell called to Charlie and told the latter that he, Charlie, was working for blood money. Additionally, according to Mason, Bell said to Charlie or "Carl," as the latter was also known, "23 years in the Union, you know better than that, get out of there Carl, that is blood money."

In addition, Mason testified that at one time while he was at work, a picket, or at least an individual whom Mason assumed was connected with the Union, took a picture of Mason while the latter was at work. Later in the day, the same individual, Timothy Garner, took another picture of an employee named Dennis when they went out for coffee. Mason testified that when Garner took his picture, at approximately the same moment, Tony

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[28] From credited testimony of both Kenneth Leistner and Brown. In other parts of this Decision, I may credit Mannsman. However, I do not credit the denials of Mannsman with regard to this incident or his version of the same. Although it may well be that there were some exaggerations in Kenneth Leistner's testimony, I found Brown to be a most reliable witness whose testimony was not altered in any substantial manner on cross-examination and conclude that his testimony lends credence to the testimony of Kenneth Leistner. Bell did not testify.

Schifano, a union official, was passing by in a red car. However, there is nothing in the testimony to connect Schifano with Garner or tending to show that Garner was taking the picture at the request of Schifano or any other union official.

In addition to all of the foregoing, another picket who had been name calling, told Mason at about the same time that he should not be surprised to see the pickets at his home. The next morning he observed some strangers across the street from his home. They carried no picket signs and Mason admitted that he had never seen these men before. According to Mason, he notified the police and some ex-marine friends. When these friends appeared on the scene, the individuals who had been across the street from Mason's home disappeared.

I cite this testimony of Mason only for the purpose of showing what the General Counsel has described as the testimony to prove violations of Section 8(b)(1)(A) of the Act. However, I find no reliable connection with Local 455 officials in any of the foregoing events involving Mason and I shall dismiss all of the violations with regard to any threats or other incidents which were alleged as violations of Section 8(a)(1) with relation to Greenpoint or employees of Greenpoint.[29]

Additionally, counsel for Respondent-Association offered the testimony of George Geuther, Jr., president of Greenpoint, to the effect that from the beginning of the strike Greenpoint had suffered considerable damage to its property caused by vandalism which in turn brought the police down to the premises quite often. Geuther also testified that the pickets would come down 20 or 30 at a

[29] The fact that Local 455 officials might have admitted picketing at the home of officers of some of the companies involved herein, does not prove that Local 455 was engaged in the incident at Mason's home.

time and swear at Geuther and the men who were working. They would also pound on the door. One day Schifano approached the area where Geuther and his father were working and told them that he did not want them to call the police about the pickets anymore. Schifano further stated, according to Geuther, that he would give them good reason to call the police if they did not stop. When Geuther asked Schifano if that was a threat, Schifano answered "yes" that was a threat. To this Geuther said "you're a bigger fool than I thought you were." [30]

Kenneth Mannsman, who has been mentioned heretofore as a member of the Executive Board of Local 455, was also involved in some events concerning Long Island Steel Products Co., a Respondent-Employer in this proceeding. These events were alleged by the General Counsel to have been violations of Section 8(b)(1)(A) on the part of Local 455. Thus, on February 25, 1976 at approximately 2:30 p.m. on the afternoon of that day, Long Island President Davidson, Vice President Steinfeld and three employees were leaving the Long Island premises in an automobile through an alley leading from the premises to the street. When they approached the sidewalk in order to cross it to go out into the street, employee Michael Frenna, who was then on the picket line, placed himself in front of the car. At that time, another individual, Ted Lincke, approached the car yelling obscenities and started taking pictures of the employees in the back seat. At the same time some of the other pickets began banging on the car. However, at that point the police stepped in, the pickets dispersed and the car was permitted to proceed. Present during this entire incident

[30] The foregoing is cited only in connection with the defense of the Respondent and is not recited as part of any testimony in support of the 8(b)(1)(A) allegations of the complaint against Local 455.

was Mannsman who stood toward the front of the car a bit to the side. Mannsman made no effort to stop what was going on and could observe Lincke taking pictures of the men in the back seat. Mannsman made no effort to move the pickets from in front of the vehicle or to stop Lincke from taking the pictures.

On Saturday, January 31, an employee of a glass company came to the premises of Long Island to repair some of the windows which had been broken. When he was finished working on a door window, this individual returned to his automobile and started up his motor. At that moment, Kenneth Mannsman stepped in front of the repairman's car and prevented him from moving. The individual seemed to be somewhat upset and came out of the car with an iron bar in his hand. He returned to the shop and Vice President Steinfeld of Long Island then called the police. When the police arrived, Mannsman romoved himself from in front of the vehicle and the repairman was able to take off.[31]

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[31] The recitation with regard to the incidents concerning Mannsman at Long Island Steel is adopted from the testimony of Long Island's president Davidson and vice president Steinfeld. Although there was some reference to the fact that this employee who had come to repair the glass in the Long Island door had threatened Mannsman with a hammer, I do not credit this for reasons that I discredit other Mannsman statements. I therefore, credit the testimony of Davidson and Steinfeld whose testimony was straightforward and unaltered on cross-examination in respect to these incidents.

General Counsel also offered testimony with regard to events which allegedly occurred at the premises of S. Cervenka and Sons, Inc. However, although this alleged incident, among others, involved the alleged puncture of a tire of a truck, there was no connection whatsoever between the Union and the puncture of the tire. Furthermore, there was no testimony offered by any witness that such witness actually saw the tire being punctured. Accordingly, at the hearing herein, the undersigned dismissed that portion of the complaint against Local 455. That dismissal is hereby reaffirmed.

In addition to the foregoing, counsel for the Respondent-Association and the individual Respondent-Employers, offered certain testimony with regard to additional incidents, not alleged as violations by the General Counsel, but which were claimed to have constituted violence and threats of violence and destruction of property at the premises of Respondent-Employers Paxton Metalcraft, Mohawk Steel Fabricators, and Trojan Steel Corp. This testimony was offered in support of Respondents' defense and offered as reasons why, in any event, no bargaining order against the Respondent-Employers or the Respondent-Association should be issued.

Paxton Metalcraft Corp.'s president Leo Mayer, testified that at the outset of the strike he had three employees in the plant, all of whom joined the strike. Among them was Antonio Monturo, who, as noted above, was solicited by Mayer and Vice President Melnick, to join Local 810, but who refused to do so. According to President Mayer, Monturo refused to return to work at the Respondent's plant because Monturo was threatened. Monturo explained to Mayer, that he was afraid, not so much for himself, but for his wife and kids because the Union knew his address and at one time there were men brandishing baseball bats in front of his house at 5 o'clock in the morning when he was ready to leave for work.

It is significant to note, however, that Monturo testified he refused to return to work because Paxton had refused to sign a contract with Local 455 and that, in fact, at the time that Mayer testified that Monturo was being threatened by Local 455, Monturo was picketing the premises of Paxton on behalf of Local 455. Thus, it is doubtful that the events which both Mayer and Melnick testified to with regard to the wrongful activity of the union representatives, as hereinafter set forth, was entirely factual and, I conclude, that there was involved in their testimony considerable exaggeration.

Mayer thus testified that on a day shortly after the strike began, the guard door in front of the entrance of the Paxton premises was torn down and off its hinges. When Mayer, who had observed all during the morning the movements of the pickets, came outside, he saw John Steinhauser, an admitted union official, immediately outside the removed door. When Mayer asked Steinhauser if he had any part in the removing of the door, Steinhauser refused to answer. However, Mayer admitted, in testifying, that he had not personally seen nor heard the door being ripped off.

Mayer also testified to two further alleged incidents. He testified that on one day when he opened the door of the plant to permit his partner, Melnick, to enter with the latter's car, union official Bell, who was standing 2 or 3 feet away from Mayer, tossed a lighted cigarette at Mayer hitting him in the chin. This resulted in an injury for which Mayer had to see a physician. Mayer further testified with regard to Bell, that Bell had threatened him, stating that Bell was going to go to Old Tappan, where Mayer lived.

Mayer also testified to a rock-throwing incident in which, allegedly, pickets were throwing rocks at Paxton employee Caruso. When Mayer observed the rock-throwing, he saw Bell throwing rocks up on the roof of the premises at Caruso who was on the roof performing work for Paxton. However, when Mayer filed a complaint with the police against Bell for the rock-throwing incident, Bell counterclaimed with a complaint that Mayer had threatened Bell with an iron pipe. Thereupon, the entire matter seems to have been dropped.

Except for the alleged incident where the door of the premises had been torn off, all of the other alleged incidents, according to Mayer's own testimony, occurred after Paxton had signed a collective-bargaining agreement with Local 810 and after Paxton had withdrawn from multiemployer bargaining with Local 455. It should be noted in connection with all of this, although Mayer's partner Melnick testified, he was not asked about any of these incidents. His testimony was limited to the circumstances under which the collective bargaining with Local 810 was executed with one exception. He testified that he did see Bell toss the cigarette at Mayer.

Thus, I find and conclude that Bell did commit the act of throwing the cigarette into Mayer's face. However, I have grave doubts as to the occurrence of the other incidents insofar as the Union's responsibility is concerned. Furthermore, by reason of the claim and counterclaim in the alleged rock-throwing incident, I find and conclude that there could have been a provocation on both sides and, additionally, witnesses called by counsel for the General Counsel testified that the rock-throwing was commenced by Paxton employee Caruso throwing rocks down on the picket from the roof of the Paxton premises. I, therefore, conclude that the evidence is insufficient to find that Bell, or any other union representative, provoked the incident.

With regard to an alleged incident involving employee Richard H. White of Mohawk Steel Fabricators, there is nothing to connect this incident to the Union. According to White, he was driving his car when another automobile drove up alongside him and two men whom he described, one of whom could possibly have been union business agent Tessler, told him that he had better watch himself inasmuch as the same people who had committed certain acts at Long Island Steel could possibly commit similar acts against White. Evidently, White had been a Local 455 member but had returned to work for Mohawk. This constituted the entire incident. Because of White's inability to definitely identify agent Tessler of Local 455 or

connect the incident directly with Local 455 and because the incident occurred away from the Mohawk plant, it could have been merely a warning given in a friendly manner. This is so because according to White, the individuals stated that they were really not concerned inasmuch they were working.

We come finally to incidents occurring at the premises of Trojan Steel Corp. and at alleged incidents occurring to members of the Feinglass family which controls that corporation.

The difficulties at the premises of Trojan Steel Corp., unlike the difficulties that occurred at other Respondent-Employers' premises, were of a more serious nature in certain respects. Additionally, they occurred before the withdrawal of the 17 Respondent-Employers from multi-employer bargaining on January 16, 1976. In fact, they occurred in September and October 1975. It should be noted, however, that the feeling of enmity which seemed to have existed at Trojan between officials of Local 455 and the pickets on the one hand and the Feinglasses, the family which owned and controlled Trojan, on the other, could have been exacerbated when a picket was hit, either accidentally or purposely, by a truck driven by Arnold Feinglass, president of Trojan on about October 10, 1975.

According to Stuart Feinglass, the son of Trojan president Arnold Feinglass, and an employee of Trojan, on or about September 30, 1975, and prior to that date, he had been warned and threatened by pickets that if he continued to work during the strike, he would be injured and, perhaps, killed. However, because of certain inconsistencies in Stuart Feinglass' testimony on direct and on cross-examination, I conclude that, to a great extent at least, much of Stuart Feinglass' testimony was exaggerated. He testified that on September 30, 1975, or

thereabout, some days after the picketing of Trojan began and after there had been some boos and other catcalls made by the pickets as Stuart Feinglass and his brother-in-law, Jim Maisch, entered the Respondent's shop, a broadcasting company's representative came to the premises of Trojan located in a section of the Bronx, New York City, and interviewed Mario Plaza, the shop steward for Local 455 who was also on the picket line on behalf of Local 455 and, also, possibly interviewed Arnold Feinglass. On that day, most probably because of the appearance of the broadcasting apparatus, a crowd gathered which was larger than had normally been picketing the Trojan premises. Present, also, at the premises were John Steinhauser, a union business agent or delegate of Local 455 and Tony Buffalino another agent or representative of that union. According to Stuart Feinglass, when the broadcasting reporters and interviewers were present, the pickets were shouting that they were going to kill Stuart Feinglass. This is one of the instances which I consider exaggerated in that I do not believe that the pickets would have done so in the presence of the broadcasting reporters. I believe such would have been highly unlikely under the circumstances. Furthermore, although, according to Stuart Feinglass, the pickets seemed even angrier the next day, and the numbers increased to 50 to 60 on October 1. I conclude that this could also well be an exaggeration because of the fact that on that date a number of employees from other nearby metal plants, who were also on strike as members of Local 455, but who were not involved in the instant proceeding, became curious and were drawn to the premises. In fact, they were not picketing Trojan but were across the street. According to Stuart Feinglass, Buffalino and Steinhauser were present across the street and were wielding baseball bats. Arnold Feinglass also testified to this. However, some doubt is thrown upon any

alleged using of baseball bats and threats hurled at Trojan employees and the Feinglasses by the striking employees and union representatives because Stuart Feinglass admitted, in testifying, as did Arnold Feinglass, that on most occasions during this entire period there were anywhere from 2 to 10 policemen at or near the premises at almost all times and especially at times when the Feinglasses were either entering or leaving the plant.

However, things began to turn truly ugly only after a picket, Tobias Wolf, was hit by the rear of a truck driven by Arnold Feinglass on October 10, 1975. That this incident occurred there is no doubt, inasmuch as Arnold Feinglass did not deny this incident in his testimony.

Sometimes Stuart Feinglass was followed by other cars when he left the plant in the evening in his own car. According to him, on one occasion not too long after the foregoing incident, he was followed by a car driven by Steinhauser who, after pulling alongside the car of Stuart Feinglass attempted to cut off Feinglass' car as they proceeded away from the plant. Also, a rock was hurled from the Steinhauser car through the driver's side window of Stuart Feinglass' automobile. The police, who were escorting Feinglass at the time, gave chase and ultimately arrested Steinhauser who was eventually convicted on two misdemeanor charges. These charges involved the willful destruction of property and the endangering of lives.

However, there occurred another incident the day after Arnold Feinglass backed his truck into, and knocked down picket Tobias Wolf. On that day, as Arnold Feinglass was standing in the garage door opening of the Trojan premises, Steinhauser saw Arnold Feinglass and came rushing at Feinglass. Feinglass, seeing Steinhauser rushing at him, pulled down the garage door and as he did

so Steinhauser, according to both Arnold and Stuart Feinglass attempted to reach under the closing door and grab at Arnold Feinglass' legs. It is true, that at that point Steinhauser was undoubtedly angry, but this anger could well have been caused by the injury to Tobias Wolf on the preceding day. While the behavior of Steinhauser at that time is not excusable, nor should it be condoned, it was certainly understandable.[32]

Stuart Feinglass also testified that at one time while he was approaching the plant, after calling to state that he was coming in and that the door should be opened, his mother, who acted as secretary to the Trojan firm, was standing at the opened door for Stuart Feinglass to enter when Steinhauser spat at her. However, it should be noted in connection therewith, that when a coffee truck appeared soon thereafter, both Stuart and his mother came out and had coffee and conversed with Steinhauser. Accordingly, I conclude that the spitting incident did not actually occur, at least not in the context in which Feinglass related.

In any event all of these events were over by the end of October. The only truly violent incident was the breaking of the glass in Stuart Feinglass' car by the throwing of a rock from the car driven by Steinhauser. While this is an unforgivable situation for which the Union must be held somewhat responsible inasmuch as Steinhauser was a union agent, there is no evidence whatsoever that Steinhauser was ever instructed by anyone superior to him in the Union to commit any violent, criminal act.

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[32] It should be noted in connection with this incident that although Stuart Feinglass testified on direct evidence that Steinhauser grabbed his father's leg., Arnold Feinglass testified that Steinhauser was not able to grab Arnold Feinglass' legs inasmuch as the door shut before Steinhauser could do so.

Additionally, although Trojan was one of the Employers who, on January 16, did withdraw from multiemployer bargaining, it is also equally true that it later signed an agreement with Local 455 which agreement was basically the same as the agreement signed by the five Employer-members of the Association who signed with Local 455 late in January 1976. Further, this agreement which was entered into in April between Trojan and Local 455, contained certain minor differences from the contract between the other Employers who signed with Local 455. These differences were differences provided to accommodate peculiar situations at the Trojan shop. Thus, even assuming the truth of the testimony regarding incidents to which Arnold and Stuart Feinglass testified, it would seem that these incidents did not prevent Trojan from accepting Local 455's contract as negotiated in January 1976. Accordingly, the incidents which occurred could not have had a chilling effect upon Trojan nor caused Trojan to be completely unwilling to do business with Local 455. Moreover, inasmuch as these incidents of violence occurred before Trojan's withdrawal and almost 6 months before the signing of the collective-bargaining agreement between Trojan and Local 455, it cannot be said that Trojan was forced by these acts of violence and alleged acts of violence into signing with Local 455, or were forced to deal with Local 455 by any of the actions of Local 455 or its representatives.

F. *The Requests for Reinstatement*

As heretofore set forth, on July 1, 1975, the employees of the Respondent-Employers who were members of Local 455 went out on strike. At that time, the strike was called for the reason that no agreement had been reached between the Association and Local 455 with regard to the adoption of a renewed collective-bargaining agreement.

The former collective-bargaining agreements between the individual Respondent-Employers and Local 455 all carried the same expiration date, June 30, 1975. Accordingly, when the strike was called and the Local 455 members walked out on their respective Employers, the strike was purely economic in nature. General Counsel contends and claims that this strike was converted into an unfair labor strike by various acts which he contends are, and were, violations of the Act committed by the Association and its members. Therefore, the employees who struck on July 1 have become unfair labor practice strikers and are entitled to reinstatement by reason of the unconditional request made on their behalf by Local 455. Received in evidence is the letter of request for reinstatement sent to the Association's members by Colavito, as president of Local 455. It was stipulated that this letter was sent by financial secretary Zito, over the signature of Colavito, on or about February 27 to 16 of the Respondent-Employers, on March 1 to 4 other Respondent-Employers, and on March 3 to Respondent-Employer Cervenka. It was further stipulated that with regard to that letter, delivery was refused by Respondents Greenpoint, Melto and Trojan. With regard to Respondent Spigner and Sons, the letters were sent, evidently, to a post office box but remained unclaimed. The letters were all uniform and stated as follows:

> On behalf of your striking production and maintenance employees, we repeat the request previously made that they unconditionally return to work at their previous or substantially similar jobs.
>
> Please advise us of the date and time that you desire them to report to work.

At the same time, and at the same dates, union financial secretary Zito, over the signature of President Colavito, sent another letter to the same Employers and

in the same manner. This letter was a second reply to the withdrawal letter of January 16 from collective bargaining by the Respondent-Employers, and also informed them that an agreement was arrived at between Local 455 and the Association which, of course, was referring to the agreement made with the five Employers on January 23, 1976. This letter stated, in substance, that the Respondent-Employers had agreed to bargain collectively with Local 455 on a multiemployer basis and designated the Association to represent them. The letter further went on to state that any attempt to unilaterally withdraw would be improper and unlawful. It then informed the addressees that on January 23, 1976 an agreement was arrived at between Local 455 and the Association and a copy of this agreement which had been arrived at was enclosed. The letter ended with the statement to the effect that Local 455 considered the parties bound by the agreement and that the withdrawing members of the Association implement the same forthwith.

Thus, there is presented for consideration hereinafter the issue of whether the employees who went out on strike were (a) unfair labor practice strikers as of the time the demand, as noted above, was made for their unconditional reinstatement and (b) whether or not the letter requesting reinstatement when considered in the context of all that occurred was, in fact, unconditional.

G. *The Respondent's Defense and Discussion Thereof*

The Respondent contends that the withdrawals from multiemployer collective bargaining on January 16, 1976, was timely and proper and lawful under the Board law and Court decisions in view of the fact, as argued by Respondents, that the parties had reached an impasse in bargaining and that the circumstances surrounding that

impasse were such as to render lawful the withdrawals. In support of this basic contention, aside from any question as to whether an impasse did exist at the time of the withdrawal, the Respondent bolsters its argument by pointing to the 8(b)(1)(A) violations on the part of Local 455 and the additional violence testified to at the hearing and as heretofore cited; to the very severe economic recession seriously affecting the economic well being of the Employer-members of the Association, some of whom were virtually without any source of business during the prolonged strike, not only because of the strike, but also because of the very serious lack of work in the entire building and construction industry; the original claimed reluctance of Local 455 to enter into multiemployer bargaining and the activities of Local 455 thereafter which indicated that Local 455 was seeking to destroy the Association and to disrupt multiemployer bargaining; and finally what Respondent claims to have been mere surface bargaining on the part of Local 455 with the intention by Local 455 not to reach an agreement with the Association as spokesman for the Association's members, but rather with the purpose in view of ultimately entering into separate agreements with the Association members, in other words, a process of divide and conquer.

In addition to this basic contention and supporting arguments, Respondent further contends that, in any event, even assuming that the withdrawals were not timely and the members of the Association are found to be obligated to bargain on a multiemployer basis through the Association with Local 455, the Association and its members are not bound by the terms of the agreement which was entered into on January 23, 1976. (Counsel for the General Counsel contends this agreement is binding upon all of the members of the Association; that all

the members of the Association must comply therewith and adopt the same as their bargaining agreement with Local 455). Finally, above and beyond all of the foregoing, the Respondent contends that pursuant to the theory of the Board in the case of *Laura Modes Company*,[33] should the Association and its members be found to have violated Section 8(a)(5) of the Act, by reason of the violence and threats of violence and destruction of property heretofore set forth above in this Decision, an order to bargain should not issue.

By reason of these foregoing contentions it becomes necessary to analyze, in the first instance, the bargaining which occurred, as earlier in this Decision set forth, to determine whether, in fact, an impasse existed. This is so because the entire defense of the Respondent with regard to the "special or unusual circumstances" surrounding the withdrawal falls by the wayside unless an impasse actually existed at the time the attempted withdrawal was made on January 16, 1976. Before doing so, however, it is well to review, in brief, the cases which deal with withdrawal from multiemployer bargaining once such bargaining has commenced. The leading case in this respect is the case of *Retail Associates, Inc.*, 120 NLRB 388, in which the Board held that where the multiemployer bargaining has commenced, an employer may not withdraw from such bargaining except by mutual consent or because of "unusual circumstances." Another case relied on heavily by both General Counsel and counsel for Respondent-Association and of the Respondent-Employers which further explicated the law of *Retail Associates, supra*, is the case of *Hi-Way Billboards, Inc.*, 206 NLRB 22. In that case, the Board decided that *impasse alone* is insuffi-

[33] 144 NLRB 1592.

cient reason to permit withdrawal of an employer from multiemployer bargaining once bargaining has commenced.[34] The Board in *Hi-Way Billboards, supra*, stated that an example of the unusual circumstances which would permit withdrawal from multiemployer bargaining after impasse would be presented where the withdrawing employer has been faced with dire economic circumstances "in which the very existence of an employer as a viable business entity has ceased or is about to cease."[35] Thus, in one case the Board has held that an employer may withdraw from multiemployer bargaining association after negotiations with a union have begun or the employer is subject to extreme economic difficulties which result in bankruptcy or an arrangement under the bankruptcy laws[36] or where an employer is faced with the eminent prospect of such adverse economic conditions as would require it to close its plant;[37] or where the employer is faced with the prospect of being forced out of business for lack of qualified employees to do the job and the Union refuses to assist the employer by providing replacements for the employees the employer has lost.[38]

It should also be noted that in the *Hi-Way Billboards, Inc.*, case *supra*, the Board also defined what it considered to be an impasse in bargaining. The Board held, "a genuine impasse in negotiations is synonymous with a deadlock: the parties have discussed subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move

[34] The cited case was denied enforcement upon other grounds, 500 F.2d 181 (C.A. 5).

[35] *Hi-Way Billboards*, 206 NLRB 22 at 23.

[36] See *U.S. Lingerie Corporation*, 170 NLRB 750, 751.

[37] See *Spun-Jee Corp.*, 171 NLRB 557, 558.

[38] *Atlas Electrical Service Co.*, 176 NLRB 827, 830.

from its respective position. When such a deadlock is reached between the parties, the duty to bargain about the subject matter of the impasse merely becomes dormant until changed circumstances indicate that an agreement may be possible. Once a genuine impasse is reached, the parties can concurrently exert economic pressure on each other; the Union can call for a strike; the employer can engage in a lockout, make unilateral changes in working conditions if they are consistent with the offers the union has rejected or hire replacements to counter the loss of striking employees. . . . Thus, a genuine impasse is akin to a hiatus in negotiations. In the overall ongoing process of collective bargaining, it is merely a point at which the parties cease to negotiate and often resort to forms of economic persuasion to establish the primacy of their negotiating position. . . . In short, a genuine impasse is not the end of collective bargaining."[39]

In support of its contention that the withdrawal or the attempted withdrawal from multiemployer bargaining on January 16, 1976 was lawful, the Respondent relies, in part, upon an administrative determination made by the Regional Director for Region 2 of the Board in which the Regional Director refused to issue a complaint upon a charge filed by the Association against Local 455 for negotiating separately with one of the original members of the Association, Dextra Industries, Inc. The charge alleged that Local 455 had refused to bargain with the Association in that having negotiated and signed a separate collective-bargaining agreement with Dextra, it sought, in effect, to refuse to bargain with the Association as representative of the members of the Association and, also, that Local 455 did so with full knowledge that

[39] Citations omitted. See *Hi-Way Billboards, supra*, 206 NLRB 22, 23.

Dextra withdrew untimely from Association bargaining. Also, the charge alleged that Local 455 had restrained and coerced the members of the Association in the selection of their representative for the purpose of bargaining. On November 21, 1975, the Regional Director for Region 2 notified the Association, in writing, that he refused to issue a complaint on the ground that the investigation revealed no evidence that the Union engaged in conduct designed to undermine the Association and that, rather, the investigation revealed that Dextra withdrew from the Association subsequent to the collapse of bargaining and chose to negotiate with the Union on an individual basis. In the dismissal letter, the Regional Director stated that impasse in bargaining had been reached before Dextra withdrew and before Local 455 consented to such withdrawal and began to negotiate with Dextra. The Association and its constituent members, who are Respondents herein, contend that this was determinative of the situation and that therefore, an impasse existed and, accordingly, the determination by the Regional Director that an impasse existed was the law of the case herein. Accordingly, Respondents argue, an impasse having existed the question then remains as to whether there was sufficient additional surrounding circumstances unusual enough to find that the withdrawal of the named individual Respondent-Employers and the Association from collective bargaining was timely and not violative of the Act.

However, from the definition and the explanation of impasse hereinabove cited, as it applies to multiemployer bargaining, it is evident that after June 30, 1975, such impasse was broken because Local 455 immediately after the strike began circulating and presented to independent iron construction companies copies of its changed proposal and at the August 1975 meeting, admittedly called at the behest of the Association, Local 455 formally presented its revised proposal to the Association negotiators. This,

of course, ended the impasse and negotiations began anew. Although the contract between Local 455 and Dextra was executed after July 1 and after the impasse had been ended, it must be assumed from the timing that the facts upon which the Regional Director of Region 2 of the Board based his dismissal of the charge filed by the Association were facts relating to conditions as they existed on and before June 30. Therefore the withdrawal of Dextra and the negotiating by Local 455 with Dextra was not unlawful and could not be interpreted as being aimed at destroying multiemployer bargaining.

It should be noted, additionally, that the administrative determination by a Regional Director who acted in the capacity of a representative of the General Counsel of the Board cannot be binding upon the Board or upon the undersigned with regard to the full determination of the instant case, not only because the facts, as the Regional Director must have known them, were different from the facts presented at the hearing herein, but also because an administrative determination by a Regional Director acting in his capacity as representative and counsel for the General Counsel, is not binding as a final determination upon the Board in the event that a complaint is later issued by the same or other Regional Director based upon a disagreement between the same parties. Such administrative determination and refusal to issue complaint is not *res judicata*, and is not determinative of the facts in the instant proceedings. Neither was the refusal of the United States District Court to enforce the 6-month resignation provision of the bylaws of the Association against Dextra in any way binding upon the determination of the issues in the current case.

Upon the refusal of the Regional Director of Region 2 to issue a complaint as aforesaid and because the United

States District Court refused to enforce the 6-month resignation provision contained in the bylaws of the Association against Dextra, the Association notified its members that it felt that it could no longer require the members of the Association to conduct their bargaining through the Association. However, the fact that the Association chose to put this interpretation upon these two foregoing determinations does not in and of itself excuse the withdrawal, months later, from the Association-wide bargaining of the individual Respondent-Employers.

As set forth earlier in this Decision, after the meeting in late August between the Local 455 negotiators and for the Association, there were several bargaining sessions during the period from August to the end of December 1975. While the record does not reveal, in detail, what occurred at those bargaining meetings, it is apparent that little or no progress was made toward reaching an agreement. However, before the withdrawal, and shortly after the end of the year 1975, Local 455 had signed a collective-bargaining agreement with Allied, the other multiemployer bargaining Association heretofore described. Under these circumstances, Local 455 was in a position to better inform, and produce for, the Association negotiators more exact details as to what the contributions to the various fund would be because Allied contract was historically the agreement which set the pattern for funds contributions from Employers in the industry whose employees were represented by Local 455. It was, therefore, finally possible for Local 455 to present these final details upon which negotiations could be furthered and upon which ultimate settlement could possibly be reached. Possibly as a result, on January 14, 1976, a negotiating session took place between representatives of the Association and Local 455. In the course of that meeting, Local

455 offered a reduction in its wage demand and the Association made a counterproposal which was rejected by the representatives of Local 455. However, although the meeting ended without any agreement on many money matters, the parties decided to once again make an attempt to see if they could move from the respective figures upon which they could not agree. Therefore, the meeting ended with the understanding that further negotiations would follow. However, only 2 days later, Irving Spigner, president of the Association, wrote to Local 455 a letter in which he set forth the decision of the Respondent-Employers herein to withdraw authorization from the Association to engage in collective bargaining or conclude any agreement on their behalf with Local 455. Thus, I find and conclude that upon the day that the withdrawal became effective, January 16, 1976, by reason of what has heretofore been recited with regard to the facts of the negotiations, and by reason of Board decisions defining impasse and the effects of the same as heretofore cited, that as of the date of withdrawal no true impasse existed. There had been movement at the last meeting held only 2 days prior to the withdrawal and although no agreement was reached on that day, when the parties parted they had agreed to meet again. The fact that the members of the Association had, by January 16, changed their minds about meeting again as a multiemployer group for the purposes of bargaining, did not in any respect create an impasse where none had before existed.

Turning now to the other contentions of the Respondents that unusual circumstances existed to warrant the withdrawal for multiemployer bargaining, the first matter for consideration would necessarily be the Respondents' contention that from the very outset of the multiemployer bargaining, indeed, before the bargaining even began,

Local 455 was not only reluctant to come to the bargaining table with the Association to bargain or to negotiate on a multiemployer basis but, in fact, set out to destroy and divide the Association. In support of this contention, Respondents argue that even before the bargaining began, Local 455 would not agree to include Employers Balfour Door Co., Weatherguard Service, Inc., and Esco Iron Works in the multiemployer bargaining group because negotiations between these three individual Employers with Local 455 had already begun.

However, while this may have represented a certain stubbornness and, perhaps, reluctance on the part of Local 455 to accept the Association as the bargaining representative of these three companies, it fails as proof that Local 455 was unwilling to deal with the Association as representative of the other Employer-members of the Association who had not begun bargaining with Local 455 on a single employer basis. Nor does it constitute proof that Local 455 embarked on a course of conduct designed to destroy multiemployer bargaining through the Association.

In further support of their contention that Local 455 sought to destroy Association-wide bargaining, Respondents also point out that during negotiations, Local 455 signed separate agreements with several members of the Association who withdrew. However, so far as the record shows, the withdrawals of those Employer-members were voluntary and not as the result of any purposeful pressure by Local 455. It would seem that those Employer-members who withdrew from multiemployer bargaining did so in order to bargain on a separate, individual basis with Local 455 possibly by reason of the fact that the strike was in effect and was hurting their business. This is a normal result of the economics of strikes. The prolonged bargain-

ing had failed to reach a point where agreement could be effected at an early date and, accordingly, the Employers who withdrew reached the conclusion that bargaining on a single employer basis with the consent of the Union would be economically more feasible for them. Therefore, I find and conclude, that the fact that these withdrawals, although due to union pressure in the sense that Local 455 and the multiemployer bargaining negotiators had not reached agreement, such pressure was not applied to any individual Employer for the purpose of forcing such Employer out of multiemployer bargaining. I find and conclude that it was the economics of the situation which brought about resignation from multiemployer bargaining by those Employers who chose to bargain separately with Local 455 while the Association continued to bargain for its other members.

Closely akin to the foregoing contention of the Respondent-Association and its members, is the further argument that during the entire course of conduct starting with the negotiating meetings which took place in June 1975 and continuing until the withdrawal by the named Respondents on January 16, 1976, the Union engaged in surface bargaining with the intention of never reaching an Association-wide agreement and with the further purpose of arriving at agreement only with the members of the Association on an individual basis. However, analysis of the bargaining meetings and the various proposals made both by Local 455 and the Association reveals that although Local 455 may have engaged in what could be termed "hard bargaining," it did not engage in surface bargaining for unlawful purposes, as contended by the Respondent-Employers and the Association. Thus, at the very outset of the bargaining, Local 455 submitted a proposal which was in all respects a complete collective-bargaining agreement with two exceptions, the first being

the absence of a specific wage proposal and the second being that the contributions to the various welfare funds was mentioned but the dollar amounts thereof were left blank.

These extensive proposals for a new contract were barely discussed at the first four bargaining sessions, all preceding the strike, because the main subject of discussion at the behest of the representatives of the Association were the so-called 50 odd differences between the contracts that were about to expire, to which the members of the Association were independently joined, and the agreement, also about to expire between Local 455 and Allied. While it is true that Local 455's initial proposals did indicate that Local 455 was desirous of a substantial wage increase for its members, the discussion at the four meetings which took place before the strike was centered, for the most part, upon the 50 odd differences, except for the discussion on the eve of the strike when the Association's representatives stated that there would have to be a wage decrease for employees of Association-members in answer to the Local 455 representative's disclosure that Local 455 was seeking a 15 percent wage increase from Allied. Additionally, at that meeting, Local 455 also informed the Association's representative that, in the main, the Allied contributions to the various funds would require an outside limit of 5 percent increase over what the members of the Association were then paying under the expiring agreements. According to Colavito, this was no different than what had been the experience of the parties, individually, over the years in which the independent Employers, who were now members of the Association, agreed to pay fund contributions equal to that agreed upon between Local 455 and Allied.

Additionally, although wages were mentioned at the meeting, they were passed over because of the 50 odd

differences and the Respondent-Association did seem to change its position and stated once Local 455 agreed to give to them the 50 odd differences, in return the Association-members would be willing to negotiate substantial wage increases.[40]

As noted above, on July 1, 1975, Local 455 began circulating a stipulation to independent industry companies, not members of either Allied or the Association, wherein it was specifically stated what Local 455 was seeking by way of wages. This stipulation also contained a provision that, as in the past, the negotiations with Allied would determine the fund contributions. Although this proposed stipulation was not distributed to the Association or its members at that time, it is difficult to believe that none of the members of the Association or the Association's bargaining committee were aware of the terms of that stipulation. However, there is no indication in the record that would definitely prove knowledge on the part of the individual members of the Association or the Association of the terms of that stipulation. The only testimony in the record with regard thereto, as to the knowledge of the Association and its members at that time, was Local 455 President Colavito's testimony that he believed that members of the Association had general knowledge of this proposed agreement and the settlements which ensued therefrom. It should be noted, however, that the amount of wage increase in that stipulation was approximately 65 cents per hour which was, according to Colavito, less than the 15 percent which Local 455 had informed the Association's bargaining committee on June 30 that Local 455 would require in any new agreement.

[40] It is not clear from the record whether the Association's proposal of a wage increase as a *quid pro quo* for the 50 odd differences was made before or after it proposed a wage decrease.

However, in any event, this was the offer made by Local 455 and submitted at the meeting held between Local 455 negotiators and Association negotiators late in August 1975. At that time, therefore, there can be no question that full knowledge of the package requested by Local 455 with regard to economic provisions was conveyed to the Association and its members. That this was not acceptable to the Association-members at that time does not constitute evidence of bad faith bargaining and perhaps not even hard bargaining inasmuch as the 65 cents per hour was somewhat of a retreat from the original 15 percent figure mentioned on June 30.[41]

As a matter of fact, at least from the record, there was some contradiction in what occurred even during the June bargaining sessions which indicated that the Association changed positions in such a manner as would in-

[41] Colavito's testimony throughout the record (he reappeared on the witness stand on a number of occasions) was not always as complete as could be desired. He was in the habit of answering questions in a manner not quite directed toward the questions, but, rather, toward what he assumed the question to be. Whether this was because he did not always listen, or whether it was a quirk in the manner in which he answered questions regardless of their nature, cannot be resolved by the undersigned. However, in the main, I find and conclude that Colavito attempted, in his own inimitable manner, to convey truthfully the events as they unfolded with regard to the negotiations and the various conversations had between himself and representatives of the Association or representatives of the individual Employer-members of the Association. Illustrative of this attempt by Colavito to relate candidly what had occurred, his testimony with regard to the emphasis in the June 1975 bargaining sessions upon the 50 odd differences, was supported by the testimony of Association President Spigner and Murray Scheiner, president of Master Iron Craft, both of whom testified that these 50 odd differences were very important to the Employer-members of the Respondent-Association from the very outset of the negotiations.

dicate that perhaps the Association itself was engaging in less than good faith bargaining. Thus, at one stage during these negotiations, as mentioned above, the Association's representative stated that they were willing to give a substantial wage increase if the 50 odd differences were straightened out. However, at the bargaining session on June 30, the position of the Association's negotiators, after Local 455's representatives stated that they would discuss the 50 odd differences separately, was that the Association's members were looking forward to a reduction in wage rates and a reduction in contribution to the funds.

At any rate, after discussion at the August 1975 meeting of Local 455's complete proposal, no agreement was reached and Respondent now claims that one of the basic reasons was that Local 455 adamantly insisted that the contributions to the various funds were to be tied to whatever was ultimately agreed upon between Local 455 and Allied. Although few bargaining sessions were held thereafter and were, for the most part, exercises in futility insofar as reaching final agreement was concerned, there was no indication that at any time during that period the Association or members considered Local 455 to be bargaining in bad faith. No charges were filed against Local 455 during that period of time except in the Dextra matter. Although this is not proof that Local 455 was not engaging in bad faith bargaining, it would indicate, at least, that the Association, which was being advised by labor relations counsel Brickman during the entire period of negotiations, did not see fit to file unfair labor practice charges on the ground that it believed that Local 455 was bargaining in bad faith.

Ulimately, even during the bargaining that occurred on Januray 14, 1976, which meeting concededly was brought about through the good offices of the New York

Mediation Service, there was movement on the part of Local 455. And, although the Association somewhat modified its proposals at that meeting, and the Union rejected the modified proposals, there was no indication that this rejection, despite Respondents' arguments to the contrary, was for the purpose of never reaching an agreement on a multiemployer basis. While it may be true that if some of Colavito's approach to bargaining and his attitude at the bargaining table was as disconcerting and aggravating as his manner of answering questions at the hearing herein, and while it is further true that had Local 455's representative been less unyielding, agreement might have been reached, nevertheless, the attitude of Colavito and other Local 455 representatives during the bargaining meetings did not indicate that Local 455 did not intend to reach agreement under any circumstances on a multiemployer basis except on a take it or leave it basis. That Local 455, through Colavito, was willing to make further concessions is indicated by the ultimate agreement reached with the 5 Employers who signed the stipulation dated January 23 after the withdrawal of the 17 other Association-members on January 16. Accordingly, I find and concluded, that the record does not substantiate a finding that Local 455 engaged in surface bargaining or failed to bargain in good faith. While it might well be that Colavito and his colleagues could have steered a more lenient course under the circumstances in order to bring about agreement, it is not within the province of the Board or the undersigned to make judgments of substantive proposals.[42]

We come now to the contention of counsel for the Respondent-Association and Respondent-Employers to the effect that the Employers who did not sign and who have

[42] *American National Insurance Co.*, 343 U.S. 395, 404.

continuously refused to sign and join in the agreement entered into between Local 455 and Carlin, Naiztat, Bay Iron Works, Wortman Iron Works and Brakewell Steel Fabricators, Inc., on the dates between Jnauary 23, 1976, and January 28, 1976 are not legally bound to do so because that contract was ultimately negotiated and entered into between Local 455 and individuals not authorized to commit the members of the Association to any agreement with Local 455.

The members of the Association's bargaining committee during the entire course of bargaining until the letter dated January 16, 1976, withdrawing authorization for 19 Employer-members of the Association, were Spigner himself, Edward Peelle of the Peelle Company, Murray Scheiner of Master Iron Craft, Lawrence Uydess of Bay Iron Works and perhaps a few others from time to time during the period of negotiation. Also, at most of the bargaining sessions as an Association representative and negotiator was Daniel Doyle, president of Brakewell Steel Fabricators.[43]

As heretofore noted, at the meeting held by the Association negotiators and the Union on January 14, 2 days before the so-called withdrawal letter of January 16, 1976, a further meeting of the parties was discussed and agreed upon. However, the intervening withdrawal letter seemed to have been sufficient to indicate that for all intents and purposes that the meeting was not to be held. There is no testimony, however, in the record which in-

[43] It should be noted that by the time Irving Spigner sent the letter of January 16 withdrawing authority of the 19 Employers from the Association to bargain for them, he was no longer associated with Spigner and Sons, Inc. However, he remained during the entire period of time, and was still at the time of hearing herein, president of the Association which, in addition to its negotiation functions, represented the members in other industrial matters.

dicated that Spigner as Association president, or anyone else in authority for the Association, notified Colavito or any Local 455 official that a meeting was not to be held on the part of the nonwithdrawing members although no specific date had been set for such meeting. However, Daniel Doyle, of Brakewell and a member of the bargaining committee of the Association, met several times with Colavito because Doyle felt that perhaps it was Colavito, himself, who was the stumbling block to progress and felt that if he could straighten out some of the matters which had caused the so-called withdrawal, perhaps progress could be made. But Doyle was not authorized in any formal manner to speak for the Association and, in fact, had not even informed Irving Spigner, the Association president, that he was in contact with Colavito. During these preliminary person-to-person discussions between Doyle and Colavito some progress toward a meeting was made and eventually, on January 23, a meeting was held at the State Mediation Board between Colavito and Kenneth Mannsman for Local 455 and Doyle, Seymour Kaplan of Carlin, and the two Naiztat brothers from Naiztat Iron Works. At the outset of the meeting, Doyle informed the union representatives that the parties who were present, although members of the Association, were representing only their own companies and not the Association. In connection therewith, Doyle specifically informed Colavito and Mannsman that any authority he might have had in the past as a member of the negotiating committee for the Association had been revoked, and that he and the others who were present represented only their own companies. Doyle further stated that any negotiations would be conducted with that understanding. Colavito immediately registered his objection to this arrangement and stated that he had come to have a meeting with the Association and that as far as he was concerned those individuals who were present represented the Association. Colavito wanted to know who had revoked Doyle's authority as a negotiator for the Association.

Doyle answered that the president of the Association had done that and while Doyle had no objection to proceeding with negotiating for his company, because he wanted to resolve the strike situation, he could not represent the Association. Finally, after Colavito and Mannsman had left the room for a separate discussion, or caucus by themselves, they returned and Colavito stated that he was willing to proceed. At that point, Doyle again reiterated his earlier position that the parties who were members of the Association were there to speak for themselves and not for the Association and again Colavito said he could not accept that position. To this Doyle answered that under those circumstances there was no point in negotiating.

However, despite the protests by both parties with regard to their differences in position, someone suggested that, nevertheless, they go ahead and discuss the contract and they did go over the proposed contract item by item. There were individual differences among the Employers present because of individual problems in their own shops and which were applicable only to their own situations. Nevertheless, the discussion went along upon those matters on which they could all mutually agree or in which they were all mutually interested. Toward the end of the day, although Colavito indicated that he was willing to sign, the others stated that they had individual problems which were not mutual in regard to all of the shops and that, therefore, it would be a necessity to have separate meetings with Colavito to iron out the individual problems as well as the mutual matters on which they could all agree. These problems, of course, which were applicable to the individual shops were unique with those shops because of the differences in the product which the shops produced and also because of differences in the type of work that was being done at the various shops.

Accordingly, the following Monday, there was a meeting between Colavito, Doyle and the representative of Wortman. Before that however, there was a meeting on Saturday, January 24. For the Union, present were Colavito and John Steinhauser, the business agent who had serviced Doyle's shop, and who also serviced the Wortman shop. Again the same discussion with regard to the authority of the individuals to sign for the Association arose and the same arguments took place with regard to Local 455's stand that the Employers present would have to sign for the Association if they came to an agreement. Doyle and Wortman's position was that they could not sign except as individuals.

Two days later, the original meeting which had been set up for the following Monday was held at the Sheraton Inn at LaGuardia Airport. Colavito was present with Mannsman. Five companies' representatives were at the meeting and they were again the representative of Wortman, Bay Iron and the others who had been at the original meeting in January between Doyle and Colavito. Again the discussion as to the representative capacity of the individuals was discussed, and again Colavito insisted that the individuals sign as representatives of the Association. Again the individuals stated that they could only negotiate and sign for themselves and not as representatives of the Association. However, despite this disagreement, the parties finally did come to an agreement on most of the contract terms and the stipulation dated January 23 was signed with each individual Employer, namely Carlin by Kaplan, Naiztat by Henry J. Naiztat, Bay Iron Works by Doyle, Wortman by its representative. Under each signature they wrote the words, "Member of the Association" upon the insistence of Colavito. At no time either during the Friday, Saturday or Monday meetings did any Employer present state that he had the authority to speak on behalf of or bind the entire Association. This was definitely made clear to Colavito. It

should be noted that although the agreement is dated January 23, 1976, the first signatures were actually placed thereon on different dates. Doyle's company, Brakewell, signed on January 28. Each of the signatories also ironed out their individual shop differences because of problems unique to their own shops. They all understood that this was not part of the basic contract, but was, rather, by side agreements. At the meeting at Brakewell on January 28, when Doyle ultimately signed as president of Brakewell, he again told Colavito that he wanted the later to understand that he was signing as a "Member of the Association" only because Colavito insisted on it and because Doyle wanted a contract for Brakewell Steel so Brakewell could get back into production. He stated emphatically that he was not signing for any other Employer, that he was not signing for the Association, that he was signing merely for Brakewell. To this, Colavito said nothing. However, it is evident that he regarded the contract as the Association contract."

The agreement that was arrived at and dated January 23, 1976 and which was signed by Brakewell, Carlin, Naiztat, Bay Iron Works, and Wortman Iron Works, was

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" All of the foregoing from testimony of Daniel Doyle as supported by the testimony of Lawrence Uydess and Irving Spigner. Although Colavito testified somewhat to the contrary, I find that in this instance, Colavito's answers were not sufficiently definite with regard to the above meetings to satisfactorily establish that the signatories to the contract dated January 23 understood they were signing on behalf of the Association or any members of the Association. Although I have credited Colavito in other respects in this Decision, I do not credit him with respect to this particular situation. To the extent that I credit Colavito, or any other witness, in some respects, and do not credit him, or any other witness, in any other respect, I do so upon the evidentiary rule that it is not uncommon "to believe some and not all of a witness' testimony." *N.L.R.B.* v. *Universal Camera Corp.*, 179 F.2d 749, 754 (C.A. 2).

later adopted by two other Employer-members of the Respondent-Association who have signed duplicate stipulations. These are Respondents Trojan and Heuser. These agreements are all uniform in the main, although there are some differences with regard to certain language uniquely applicable to the individual shops, which differences are contained in separate stipulations. The uniformity of the agreements would seem to indicate that the agreements were negotiated and signed as agreements of the Association for and on behalf of the Association, and that, therefore, the other Respondent-Employer members of the Association who have not signed are obligated to sign and be bound by this agreement. On the other hand, as counsel for the General Counsel himself has pointed out, the record shows that, in the past, it has been the practice, even before the formation of the Association, for the independent Employers who are now members of the Association to sign virtually similar "independent agreements" except for differences uniquely applicable to their own particular shops because of differences either in operation or the type of product which the particular shop was producing.

The fact that there is uniformity in the ultimate stipulation signed by the seven or so shops, does not in and of itself support the General Counsel's contention that these agreements were negotiated for and on behalf of the Association and obligated all the Association-members to become parties thereto and to sign similar agreements. It is true, as noted by counsel for the General Counsel, that if the other members are not ordered to sign, this could present problems for Local 455 with regard to negotiations with the other members of the Association because Local 455 cannot retain credibility if it gives better terms to some members than others. On the other hand, the fact cannot be ignored that the Association-members who did sign the January

23, 1976 agreement as "Members of the Association" did so at the insistence of Local 455, which never consented to the withdrawal of the other Association-members from multiemployer bargaining. The issue presented by these conflicting facts are discussed and resolved in a further section of this Decision.

H. *The "Laura Modes" Defense*

Counsel for Respondent-Association and its individual members named as Respondents herein contends that even assuming the Board would ordinarily, under the circumstances in this case, issue a bargaining order against the Association and its members to bargain with Local 455, no bargaining order should issue because of the violence threats of violence and destruction of property claimed to have been committed by officers and officials of Local 455 and that the precedent for the withholding of a bargaining order in a case such as this, has been set by the Board in the case of *Laura Modes Company*, 144 NLRB 1592, 1596.[45]

It is true that the conduct of Local 455, through some of its agents, especially Mannsman and Bell, as heretofore related, was far less than exemplary, and that the conduct heretofore found to have been violative of Section 8(b)(1)(A) on the part of Local 455 cannot be condoned. However, the record does not show that Local 455 has engaged in this type of conduct, historically, whenever its demands during negotiations and during strikes have not been met by Employers with whom it deals. Additionally, there were also, originally, 31 Employers, as demonstrated by the exhibits received in evidence herein, who authorized the Association to bargain on their behalf. White

[45] See also *Union Nacional de Trabajadores*, 219 NLRB 862, 863-864; *Allou Distributors, Inc.*, 201 NLRB 47.

it is true that some of these Employers, early in the game, dropped by the wayside, and signed separate agreements with the consent of Local 455, there were, throughout the entire period from June 1975 until January 16, 1976, a minimum of 23 Employers still negotiating, or at least still authorizing the Association to deal on their behalf. And it was not until January 16 that 17 Employers withdrew their bargaining authorizations from the Association.

However, as heretofore set forth, there were only six Employer-members out of the total membership of the Association who were, possibly, victims of any unlawful activity which could possibly be the responsibility of Local 455. These were, as noted above, Koenig, Long Island, Greenpoint, Paxton, Mohawk and Trojan. And in the cases of Paxton, Mohawk and Trojan, there was no charge or complaint filed with regard to any activity which could be classified as violent.

I have heretofore set forth and found that the Union has engaged in certain activity which is found to have been violative with regard to the first three of the above-named Employers. All of the violative conduct found with regard to those three Employers, in sum, totaled the taking of photographs of employees, the picketing of an employee's home, threats of injury, blocking of ingress and egress from a plant on one specific day with regard to Respondent-Employer Koenig and the same with Respondent-Employer Long Island. The taking of the photographs was only with regard to two of these Employer's strikebreaking individuals whom they hired or had continued to work after the strike.

Additionally, it should be noted that the conduct found in those three matters to have been violative of Section 8(b)(1)(A) of the Act was conduct which occurred only

after the withdrawal by the 17 Employers on January 16 from multiemployer bargaining. This withdrawal resulted in a complete cessation, with but two exceptions, of bargaining with Local 455 by the withdrawing members on any basis, multiemployer or individual, whatsoever. Furthermore, each of the three Respondent-Employers, whose premises, officials or employees were victims of unlawful union conduct, had engaged in pervasive unfair labor practices including, among other things, the signing of collective-bargaining agreements with Local 810 of the Teamsters in the cases of Greenpoint and Long Island, before these Employers had even withdrawn from multiemployer bargaining, and in the case of Koenig soon thereafter. With regard to the other three Respondent-Employers whose plants were picketed and who suffered some inconvenience and, perhaps, some minor injury to person or to their property, such injury could not be, as heretofore set forth, directly attributed to any policy on the part of Local 455 to commit any such unlawful action, even though that union must bear the responsibility.

Perhaps the most violent conduct on the part of union officials or conduct by pickets in the presence of union officials who made no effort to stop the pickets from their activities was, if believed, at the premises and away from the premises of Respondent-Employer Trojan. Again, the actions of union representatives Steinhauser and Mannsman, if the testimony regarding such is accepted, is certainly not to be condoned. It was, perhaps, as noted above, caused by the striking with his truck by Trojan President Feinglass of a picket lawfully picketing that Respondent's premises. The reaction to that was, for the most part, an almost instantaneous reaction provoked by the violence, purposeful or not, committed by President Feinglass. Additionally, in the case of Trojan, this activity all took place months before the withdrawal. There

was a long period of quietus between that activity and the withdrawal from multiemployer bargaining. Moreover, Trojan could not have believed that this alleged unlawful activity was quite as serious as the Feinglasses', father and son, had testified, in view of the fact that Trojan ultimately, voluntarily, came to Local 455's representative and adopted the stipulation dated January 23, 1976 and is currently under contract with Local 455.

Additionally, the fact cannot be ignored that only in a very few instances was there any desertion from the ranks of Local 455 into Local 810, or the crossing of picket lines by Local 455 members. Large desertion from its ranks could have indicated that Local 455 was using violence as a strategem for forcing its members to maintain their loyalty to Local 455. On an overall basis, however, considering the total number of Employers and employees involved, the activities heretofore found to have been either unlawful, or violent but not alleged in the complaint against Local 455 issued by the General Counsel, were not very pervasive when the entire record is considered. As noted, there is no evidence that violence was a policy of Local 455 either in the past or at the time of the events herein. Accordingly, it cannot be concluded that the activity above-mentioned on the part of some of Local 455's representatives, or on the part of pickets at the various Employers' establishments, constituted the type of pervasive, planned violence such as has been held by the Board to warrant the withholding of a bargaining order.[46]

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[46] *Unión Nacional de Trabajadores*, 219 NLRB 862; *Allou Distributors, Inc.*, 201 NLRB 47; *Laura Modes Company*, 144 NLRB 1592. Counsel for the General Counsel advances the argument that inasmuch as this was not an initial organizational campaign, but rather a long drawn out strike and picketing with a union which had for many years been the bargaining representative of

[Footnote continued on following page]

Accordingly, I find and conclude that the possible misconduct at six out of the total of the Respondent-Employers' plants, does not constitute evidence of a deliberate plan or policy on the part of Local 455 by intimidation or violence to ensure to Local 455 continued adherence by its members or to force the Employers or the Association to capitulate to its demands. As pointed out by the General Counsel in his brief, the strike was very lengthy, the Employers involved, themselves, have committed grave unfair labor practices, as hereinafter discussed, and yet, despite all of this, the vast majority of Local 455 members who went out on strike and picketed, remained loyal to Local 455.[47]

I. *The Discharges and the Refusals to Reinstate the Striking Employees*

As recited earlier in this Decision, on two occasions employee Michael Frenna of Long Island was told by Long Island's president, Davidson, in an attempt to persuade Frenna to join Local 810 that his job would be in jeopardy unless he did so. Upon Frenna's refusal on both occasions to accept or seek membership in Local 810 and after he remained adament in his adherence to Local 455, Davidson told him on both occasions that

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the Respondent-Employers' employees herein, this is a distinction between the *Laura Modes* theory and the present case. However, I do not rely on this contention as having validity inasmuch as it is a distinction without a difference. Furthermore, in the *Union Nacional de Trabajadores* case, *supra*, the persuasive violent activity had continued over a period of time and during earlier organizing and bargaining periods.

[47] See *United Mineral and Chemical Corporation*, 155 NLRB 1390 which held that conduct similar to the conduct complained of by the Respondents herein, was basically conduct occurring in the "heat of picket line tensions" and not part of a plan of intimidation.

Frenna had better look for another job. Additionally, Long Island's vice president, Steinfeld, made a like threat when he told striking employee Harry Bender that Long Island had signed a collective-bargaining agreement with Local 810 and that the striking employees were all out of jobs.

Virtually the same condition existed at Respondent Greenpoint. There, George Geuther, Jr., informed striking employee Joseph Matzell in September 1975 that if Matzell did not join Local 810 he would have no job. Matzell refused to join Local 810. Thereafter, some time either before or after the withdrawal letter of January 16, Geuther asked Matzell, who was then picketing, why the latter was doing so inasmuch as he no longer worked for Greenpoint. At approximately the same time Geuther said to employee Gontorski when the latter refused to join Local 810 that "I'm going to have to get men to work for me from 810 and you won't have a job here no more." This clearly referred not only to Gontorski and Matzell but to all of Greenpoint's employees. It should be noted that Gontorski took this to be a discharge and returned to Greenpoint in May 1976 for his tools and other personal belongings. At that time he was not permitted to enter the shop. That it was the intention of Geuther to discharge all of his employees is better proven by uncontroverted testimony of employee Salvatore Gulino upon his refusal to support Local 810. At that time, Geuther told him, as he had told other employees, that it was better if Gulino would look for another job. Employee Stanley Sieminski also confirmed this when he testified, credibly, that when all four of Greenpoint's employees refused to join Local 810, they were told by George Geuther, Jr., to look for new jobs.

However, it is not certain whether Greenpoint, after sending its employees letters, despite all of the foregoing,

in late October 1975 stating that they should return to work by November 10, 1975 or their jobs would be filled by other personnel, ever did refill all their jobs. One employee, Richard Mason, was hired on February 23, 1976, after Greenpoint had committed other unfair labor practices. In any event, there being no evidence that these employees were replaced for perhaps one of them, it would seem that they are entitled to reinstatement either as discharged employees or, as hereinafter set forth, as employees for whom the Union offered to return to work unconditionally. By that time these employees had become unfair labor practice strikers as hereinafter further detailed.

With regard to any other Employers, there is no direct evidence of discharges. However, a review of the events as they unfolded from June 30, 1975 until the request for reinstatement of these employees by Colavito in February 1976, reveals that the strike which began on July 1, 1975 was converted, at the latest, by January 16, 1976 to an unfair labor strike with regard to every one of the named Respondent-Employers herein. It is unnecessary for me to list all of these unfair labor practices, but among them were threats of discharge, actual discharges, the unlawful signing of collective-bargaining agreements with Local 810, the general refusal to bargain arising out of the withdrawal for multi-employer bargaining among other things. Accordingly, at the time the request of the Union over the signature of Colavito on behalf of all the striking employees to unconditionally return to work for their respective Employers was sent to the Respondent-Employers, these striking employees were unfair labor strikers, the strike having been converted by the Respondents' unfair labor practices to an unfair labor strike. Accordingly, the failure and refusal on the part of the Respondent-Employers to reinstate these employees up to and including

the date of the hearing herein and perhaps to the date of this Decision, constitutes further violations of Section 8(a)(3) and (1) of the Act.[48]

J. *Summary and Conclusions*

The contentions and arguments in support thereof presented by the Respondent, while seeming, at first blush, to have some merit, and which would, collectively, according to Respondent, indicate that the withdrawal from the multiemployer bargaining was timely and lawful, I find are without merit in their totality.

It is quite true, and the record supports the factual contention of the Respondent-Employers and the Association, that the entire industry, of which the Association and its members are part, has been suffering from the nation-wide recession and that a number of the Respondent-Employers are having some financial difficulties. The statements and testimony by officials of two of the Respondents, Ikenson and Spigner and Sons, that they have absolutely no business whatsoever and have had no business whatsoever since before the strike commenced, indicates that there is certainly a precarious position with regard to the economics of at least two of the Respondent-Employers involved. Nevertheless, with the exception of Respondent-Employer Ikenson, there has been no showing that any of these Employers are in such condition that they are nearing bankruptcy or that, the Union is withholding employment of its members from them. In fact, quite the contrary is true. The Union has made an offer

[48] Although counsel for the General Counsel lists certain shops in which there was evidence that they have not hired employees since the strike, I nevertheless make no findings with regard thereto but will, in my recommendations hereinafter set forth, leave that determination to be made in any supplemental proceedings necessary to determine backpay.

to return the striking employee members of Local 455 to return to work unconditionally so that there is no dearth of employees whom Local 455 would supply who could perform work in the various shops of their respective Employers.

Additionally, as noted above, there has not been a refusal by Local 455 to bargain collectively with the Association on a multiemployer basis but, rather, Local 455 as well as the Association and its members, have engaged in hard bargaining which, up to the date of January 16, the date of the withdrawal, has resulted in failure to arrive at a collective-bargaining agreement. It is unnecessary at this point to review the bargaining which took place at the various negotiation meetings. I find and conclude, however, that there has not been a failure on the part of Local 455 to bargain in good faith.

Looking to other contentions which the Respondent-Association and its members advance to seek to prove "unusual circumstances" which would permit withdrawal from multiemployer bargaining under Board and Court precedent, I do not find that the actions of the various officials of Local 455, namely Mannsman, Bell, Matienzo, or others, to have been so pervasive with regard to all of the Employers involved as to constitute any further evidence that the Union was seeking to (a) destroy the multiemployer bargaining group or (b) cause the Board to withhold a bargaining order in any event. Moreover, I do not find that the so-called "hard bargaining" engaged in by Local 455, or the bargaining by Local 455 with individual members who dropped out of multiemployer bargaining with the consent of that union constituted, in any respect, a deliberate plan or policy of the Union to break up the Association as a multiemployer bargaining group as alleged and contended by the Respondents. In fact, it is doubtful that Local 455 was obliged, in the first instance, to accept multiemployer bargaining. The record is devoid of evidence that would indicate an intention to destroy multiemployer bargaining once Local 455 accepted multiemployer bargaining with the Association. Nor is it for the Board to judge whether Colavito, Local 455 president, acted wisely or pragmatically throughout the bargaining. So long as the bargaining tactics in which Colavito engaged did not constitute either a refusal to bargain or an attempt to split, divide and conquer, the wisdom of such tactics is not for the Board to judge.

With regard to the withdrawal, there is one item which becomes necessary to finally discuss. It is true that under the Board's original theory with regard to multiemployer bargaining as set forth in the case of *Retail Associates*,[49] consent is necessary to the formation of multiemployer bargaining and is based at its inception on consent of the employees, their employer and the union involved. In the case at bar, it is possibly arguable that the withdrawal on January 16, 1976, constituted a withdrawal of such consent by the vast majority of the original Employers who constituted the multiemployer bargaining group. They having withdrawn from such multiemployer bargaining, the bargaining group was by that withdrawal completely destroyed because the consensual conception of multiemployer bargaining was at the same time destroyed for all practical purposes. However, considering the events that preceded the withdrawal on January 16, 1976, including the pervasive unfair labor practices engaged in by the bulk of the Employers involved, the violations of Section 8(a)(2) in assisting Local 810, the threats, to discharge and the discharges, and the other violations heretofore found, the withdrawal of consent of a majority of the Association-members cannot be accepted as a reason to permit such withdrawal and find the same to have

[49] 120 NLRB 585.

been lawful. To permit withdrawal, under such circumstances, would be tantamount to creating a precedent whereby the Board would permit withdrawal from and destruction of multiemployer bargaining whenever the majority of a multiemployer group does not get, through group negotiations, what it is seeking by way of a collective-bargaining agreement. This would not only be a dangerous precedent, but would, in effect, result in rewarding employers such as those in the case at bar for their own unfair labor practices.

It follows, therefore, that although the collective-bargaining agreement dated January 23, 1976 between Local 455 and the seven Employer-members of the Association was agreed to by but a remnant of the total membership, it is, nevertheless, binding on those who withdrew from multiemployer bargaining. It is true that Doyle of Brakewell, and the others who signed, repeatedly emphasized they were signing for themselves only, and not on behalf of the Association. But, Local 455 never consented to this, and its insistance that the seven sign as "Members of the Association" emphasized and established its refusal to consent to either the withdrawals of January 16 or to the seven signing only as unrepresented individuals.

While it might seem inequitable to force upon the majority of the Association's members a contract to which they did not consent, it cannot be denied that this situation was the result of their own, unlawful and untimely withdrawal from multiemployer bargaining. If this result seems harsh, the alternative, as stated above, would be to reward them for their own unfair labor practices and to place Local 455 in an awkward position of possibly having to give better contract terms to some members of the Association than others. This would destroy the concept of multiemployer bargaining. Accordingly, the continuing failure and refusal to sign the January 23, 1976 agreement constitutes an additional unlawful refusal to bargain.

Accordingly, I find and conclude that the withdrawal on January 16, 1976 of the 17 Employers mentioned in the letter of withdrawal of that date constituted and does still constitute violations of Section 8(a)(5) and (1) of the Act. I further find that the threats to discharge and the discharges of the employees and the refusal to reinstate the unfair labor practice strikers upon their unconditional offer to return to work constitutes violations of Section 8(a)(3) and (1) of the Act. I further find and conclude that the negotiation and signing of the collective-bargaining agreements with Local 810 of the Teamsters and the urging and soliciting of membership in Local 810 by the Employers involved constitutes, and still does continue to constitute, violations of Section 8(a)(2) and (1) of the Act. I also find that on an overall basis, the conduct of the Respondent-Employers herein and the Association constitute violations of Section 8(a)(5) and (1) of the Act.

I base the foregoing findings upon all that I have set forth heretofore. I further find and conclude that by refusing to continue to bargain with Local 455 and thereby violating Section 8(a)(5) of the Act, the Respondent-Association and its members named as Respondent-Employers herein have failed to bargain for a unit of their employees which I find constitutes an appropriate unit for collective bargaining as follows:

> All production and maintenance employees, including plant clerical employees employed by the Employer-members of the Respondent-Association, exclusive of office clerical employees, superintendents, and all supervisors as defined in Section 2(11) of the Act.

Decision

I further find, as hereinbefore set forth, that the conduct of Local 455's representatives with regard to Employers Koenig, Long Island Steel Products, and Greenpoint, constitutes violations of Section 8(b)(1)(A) of the Act on the part of Respondent Local No. 455.

IV. *The Effect of the Unfair Labor Practices Upon Commerce*

The activities of all of the Respondents, described in section III, above, occurring in connection with the unfair labor practices found above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

Conclusion of Law

1. Respondent-Association and the Respondent-Employers named above, and each of them are Employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local 455 is a labor organization within the meaning of Section 2(5) of the Act.

3. Local 810 is a labor organization within the meaning of Section 2(5) of the Act.

4. All production and maintenance employees, including plant clerical employees, employed by the Employer-members of Respondent-Association, exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Decision

5. Local 455 has been and is now the exclusive representative for the purposes of collective bargaining of all of the employees of the unit described above in paragraph 4.

6. The strike of the Employer-members of Local 455 in the unit above described, which began on or about July 1, 1975 as an economic strike, was converted to an unfair labor practice strike by reason of the unfair labor practices hereinafter recited, said conversion having occurred no later than January 16, 1976. The strikers at that time became unfair labor practice strikers entitled to all the rights and privileges of such strikers.

7. By soliciting their employees to abandon Local 455 and urging and soliciting their employees to join Local 810, Respondents Long Island Steel Products Co., Inc., Greenpoint Ornamental and Structural Iron Works, Inc., Roma Iron Works, Inc., Paxton Metalcraft Corp., Trojan Steel Corp., G. Zaffino and Sons, Master Iron Craft Corp., S. Cervenka and Sons, Inc., and the Respondent-Association, rendered and are rendering unlawful assistance and support to a labor organization and are engaged and have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

8. By threatening its employees with discharge, and other reprisals in order to induce them to support or join Local 810 or to abandon Local 455 or to close its plant for that purpose Respondent-Employers Long Island, Greenpoint, Roma, Trojan, and Zaffino have and are violating Section 8(a)(1) of the Act.

9. By refusing to recognize or bargain with Local 455 as the exclusive collective-bargaining representative of the employees of the Respondent-Employers in the aforesaid unit of production and maintenance employees, the Respondent-Employers have and are violating Section 8(a)(5) and (1) of the Act.

10. By discharging their employees in reprisal for their employees' support of Local 455 and by failing and refusing to reinstate their striking employees upon their unconditional application for reinstatement, the Respondent-Employers herein have violated Section 8(a)(3) and (1) of the Act.

11 By failing and refusing to sign the collective-bargaining agreement entered into between Local 455 and other Employers dated January 23, 1976, after withdrawing from such multiemployer collective bargaining through the Association, the Association and the Respondent-Employers with the exception of Respondents Trojan and Heuser have violated and are violating Section 8(a)(5) and (1) of the Act.

12. By threatening to inflict physical harm on the employees, by blocking ingress to Respondent-Employers' plants, by coercively photographing employees as they cross the Local 455 picket line, Respondent Local 455 has violated and is violating Section 8(b)(1)(A) of the Act.

13. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

V. *The Remedies*

It having been found, as set forth above, that the Respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, set forth below, designed to effectuate the policies of the Act. It having been found that the Association and its members have failed and refused to bargain with Local 455 in good faith as required by Section 8(a)(5) and 8(d) of the Act, *it will be ordered that the Respondent cease and desist therefrom and to bargain with Local 455 at reasonable*

times at the request of Local 455. Additionally, it having been found that the said Respondent-Employers have failed unlawfully to enter into the collective-bargaining agreement entered into between Local 455 and the seven other Employers, dated January 23, 1976, it will be ordered that the said Respondents execute such agreement.

It having been found that a number of the Respondent-Employers have unlawfully recognized and entered into collective-bargaining agreements with Local 810, in order to restore the status quo, it is clear *that an order should issue rescinding the Local 810 contracts in their entirety.* It having been found that a number of the Respondents have coercively threatened their employees because of the latters' adherence to Local 455 and in order to persuade said employees to become members of Local 810, it will be ordered that said Respondents cease and desist therefrom. It having been found that certain of the Respondents have discouraged membership in Local 455 by discriminating in regard to hire or tenure of employment of their employees, it will be ordered that they cease and desist therefrom.

It having been found that the employees of the Respondent-Employers who went out on strike on July 1, 1975, *and thereafter, have become unfair labor practice strikers by reason of the unfair labor practices committed by the various Respondent-Employers,* it will be recommended that the Respondents *offer them immediate and full reinstatement to their former or substantially equivalent positions, dismissing if necessary, any persons hired on or after the commission of the first unfair labor practices committed by each individual Employer as the case may be.* It having been found that Local 455 made an unconditional offer on behalf of all of its striking members who are employees of the named Employers, the date of the unconditional offer to return to work *shall be the date on which backpay shall be computed,* and, *each Respondent shall make whole each of the said strikers for any*

loss of earnings resulting from the refusal by the individual Respondent-Employers to reinstate all of the employees for whom the unconditional offer to return to work was made, the loss of earnings to be computed on a quarterly basis in the manner described by the Board in F. W. Woolworth Company, 90 NLRB 289 and *Isis Plumbing & Heating Co.*, 138 NLRB 716.[50]

It having been found that Local 455 has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, it will be recommended that Local 455 cease and desist therefrom.

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(b) of the Act, I hereby issue the following recommended:[51]

ORDER

A. Respondent-Association and Respondent-Employers, their officers, agents, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize or bargain with Local 455 as the exclusive collective-bargaining representative of the employees of the Respondent-Employers in a unit

[50] At the hearing herein, it was credibly testified by representatives of *both Respondent Spigner and Sons* and *Respondent Ikenson* that they have not had any employees since the strike and are no longer in the business which would require the use of members of Local 455. The order will be applicable to them only if, as and when they resume such operation.

[51] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the Respondent-Association, exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

(b) Discouraging membership in Local 455 or encouraging membership in Local 810, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

(c) In any other manner assisting or contributing financial or other support to Local 810, or any other labor organization.

(d) In any other manner interfering with, restraining or coercing their employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. All of the Respondent-Employers, with the exception of Respondents Roma Iron Works, Inc. and S. Cervenka and Sons, Inc., shall cease and desist from:

(a) Withdrawing or withholding authorization from the Respondent-Association to bargain collectively with Local 455 and to execute and administer an agreement on their behalf with Local 455.

3. Respondent-Employers, with the exception of Respondents Trojan Steel Corp. and Heuser Iron Works, Inc., shall cease and desist from:

(a) Failing or refusing to sign or to give affect to the collective-bargaining agreement dated January 23, 1976, by Local 455 and certain Employer-members of the Association.

(b) Failing or refusing to offer to all their employees who engaged in a concerted work stoppage and a strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

4. Respondents S. Cervenka and Sons, Inc., Koenig Iron Works, Inc., Greenpoint Ornamental and Structural Iron Works, Inc., Long Island Steel Products Co., Inc., Master Iron Craft Corp., Mohawk Steel Fabricators, Inc., Paxton Metalcraft Corp., Melto Metal Products, Co., Inc., and Roman Iron Works, Inc., shall cease and desist from:

(a) Recognizing Local 810 as the bargaining representative of any of their production and maintenance employees unless and until said labor organizations shall have been certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Giving effect to their collective-bargaining agreements with Local 810, or to any modification extension supplemental renewal thereof, or to any superseding contracts with Local 810, unless and until said organization shall have been certified by the National Labor Relations Board.

5. Respondent Long Island Steel Products Co., Inc., shall cease and desist from:

(a) Urging or soliciting its employees to join Local 810 or to abandon Local 455.

(b) Threatening to close its business unless its employees abandon Local 455 or join Local 810.

(c) Informing its employees that it will never sign a contract with Local 455.

(d) Offering its employees various improvements in their working conditions in order to induce them to support and join Local 810 or to abandon Local 455.

(e) Threatening its employees with discharge and other reprisals in order to induce them to support or join Local 810 or to abandon Local 455.

(f) Urging or encouraging its employees to go to the offices of Local 810, offering to transport them to said offices, transporting them to Local 810 offices, or participating or remaining present at Local 810's offices as their employees are asked to join or support Local 810 by an agent of Local 810.

(g) Discouraging membership in Local 455 or encouraging membership in Local 810 by discharging or otherwise discriminating in regard to hire or tenure of employment or any other term or condition of employment.

6. Respondent Greenpoint Ornamental Iron Works, Inc., shall cease and desist therefrom:

(a) Warning or directing its employees to refrain from becoming or remaining members of Local 455 or to refrain from giving any assistance or support to Local 455.

(b) Threatening its employees with discharge or other reprisals if they become or remain members of Local 455 or if they give any assistance or support to Local 455.

(c) Warning or advising its employees or employees of other Employers engaged in commerce that it would never sign a contract with Local 455 or that it would close its plant before signing a contract with Local 455.

(d) Urging or encouraging its employees to go to Local 810's offices or offering to transport the said employees to Local 810's offices.

(e) Urging or soliciting its employees to join Local 810 or threatening them with discharge if they did not do so.

(f) Discouraging membership in Local 455 or encouraging membership in Local 810 by discharging or otherwise discriminating in regard to hire or tenure of employment or any other term or condition of employment.

(g) Promising its employees improvements in their working conditions to induce them to abandon Local 455 and to join and support Local 810.

7. Respondent Roma Iron Works, Inc., shall cease and desist from:

(a) Threatening its employees with discharge and plant closure if its employees continued to support or assist Local 455.

(b) Informing its employees that it intended to sign a contract with Local 810, and would never sign a contract with Local 455.

(c) Informing its employees that it wanted another union because of the strike called by Local 455 or encouraging its employees to join Local 810.

(d) Requesting its employees to accompany it to the offices of Local 810, and accompanying them to Local 810's offices or remaining present as its employees are asked to support or join Local 810 by an agent of Local 810.

8. Respondent Paxton Metalcraft Corp., shall cease and desist from:

(a) Urging or encouraging its employees to support Local 810 or to abandon Local 455.

(b) Informing its employees it signed a contract with Local 810 or that it will not deal with, recognize, bargain or sign a contract with Local 455.

9. Respondent Trojan Steel Corp., shall cease and desist from:

(a) Threatening its employees with discharge unless they abandon Local 455.

(b) Informing its employees it would never sign a contract with Local 455.

10. Respondent G. Zaffino and Sons, Inc., shall cease and desist from:

(a) Offering to transport its employees to the offices of Local 810, transporting employees to the office of Local 810 or remaining present or participating when its employees were asked to join or support Local 810 by agents of Local 810.

(b) Threatening its employees with plant closure and other reprisals unless they abandon Local 455 and join or support Local 810.

(c) Urging or encouraging its employees to support or join Local 810 or to abandon Local 455.

11. Respondent Master Iron Craft Corp., shall cease and desist from:

(a) Informing its employees it cannot employ them unless they abandon Local 455.

(b) Informing its employees it has ceased to recognize or bargain with Local 455.

B. The Respondent-Association and the Respondent-Employers shall take the following affirmative action necessary to effectuate the policies of the Act:

1. Recognize and bargain collectively with Local 455, upon request, as the exclusive collective-bargaining representative in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the Respondent-Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes,

wages, rates of pay, hours of employment or other conditions of employment.

2. Respondent-Association and Respondent-Employers, with the exception of Respondent Trojan Steel Corp., and Respondent Heuser Iron Works, Inc., shall:

(a) Sign and give affect to the collective-bargaining agreement dated January 23, 1976, between Local 455 and certain Employer-members of the Respondent-Association.

(b) Offer to all their employees who engaged in a concerted work stoppage and strike, commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

Additionally, they shall make whole their employees for any loss of pay such employees may have suffered by reason of the failure and refusal by the aforesaid Respondents to reinstate them to their former jobs or substantially equivalent positions upon the employees' unconditional offers to return to work. They shall make whole their employees in the manner set forth in the portion of this Decision entitled "The Remedies."

3. Respondent Greenpoint Ornamental and Structural Iron Works, Inc., and Respondent Long Island Steel Products Co., Inc., shall offer to the following employees immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges and shall make whole the said employees named below for any loss of pay they may have suffered by reason of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedies:"

Michael Frenna

Joseph Matzell

Adam Gontorski

Stanley Sieminski

Salvatore Gulino

4. Respondents S. Cervenka and Sons, Inc., Koenig Iron Works, Inc., Greenpoint Ornamental and Structural Iron Works, Inc., Long Island Steel Products Co., Inc., Master Iron Craft Corp., Mohawk Steel Fabricators, Inc., Paxton Metalcraft Corp., Melto Metal Products Co., Inc. and Roman Iron Works, Inc., shall reimburse all present and former employees *for all moneys unlawfully extracted from the said employees for initiation fees, dues, and assessments under their respective contracts with Local 810, together with interest thereon at the rate of 6 percent per annum.*

5. All of the said Respondents, shall upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records and reports and all other reports necessary to analyze the amount of backpay due under this Order.

6. The Respondent-Association and the Respondent-Employers shall post at their places of business and plants located at various places in New York City, and its environs, at places where notices to employees are customarily posted, copies of the notices attached hereto marked "Appendix A-R." [52] Copies of said notices, on forms provided by the Regional Director for Region 29, after being duly signed by the various Respondents' representa-

[52] In the event that the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notices reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

tives, shall be posted by the Respondents immediately upon receipt thereof and be retained by them for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said materials are not altered, defaced, or covered by any other material.

7. Respondent-Association and each Respondent-Employer shall separately notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps each Respondent has taken to comply herewith.

It is further ordered that the complaint herein against the Respondent-Association and the individual Respondent-Employers shall be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

C. The Respondent, Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, shall:

1. Cease and desist from:

(a) Threatening to inflict physical harm on employees of members of the Association.

(b) Blocking ingress and egress at the plants and places of business of members of the Association.

(c) Photographing employees of Employers of the Association as the said employees crossed the Respondent Union's picket line in a manner so as to intimidate or have the effect of intimidating said employees.

(d) In any other manner interfering with, coercing or restraining employees of members of the Association, or any other employers, in violation of the said employees' Section 7 rights.

2. Post at the offices of Local 455 and all other places where notices to members are posted, copies of the attached notice marked "Appendix S." [53] Copies of said notices, on forms provided by the Regional Director for Region 29, shall, after being duly signed by the Respondent Union's representatives, be posted by the Respondent Union immediately upon receipt thereof and be maintained by the Respondent Union for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(a) Mail to the Regional Director for Region 29, signed copies of "Appendix S" for posting by the Employer-members of the Association at their various places of business copies of the said notice on the forms provided by the Regional Director. Said copies shall be duly signed by the Respondent Union's representative and be forthwith turned to the Regional Director for such posting.

(b) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Decision as to what steps the Respondent Union has taken to comply herewith.

It is further ordered that the complaint against Local 455 be, and it hereby is, dismissed insofar as it alleges violations of Section 8(b)(1)(A) of the Act not found herein.

Dated, Washington, D.C. March 14, 1977

(Signed) MORTON D. FRIEDMAN
MORTON D. FRIEDMAN
Administrative Law Judge

[53] See fn. 52.

APPENDIX A

JD-127-77

FORM NLRB-4727 (3-60)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of employees of the members of our Association in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by our Employer-members, exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in said LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization by suggesting or instructing our Employer-members to discriminate against their employees in regard to hire or tenure of employment or any other term or condition of employment.

Appendix A

WE WILL NOT in any manner assist or give support to said LOCAL 810, or to any other labor organization.

WE WILL NOT in any manner instruct or otherwise encourage our Employer-members to interfere with, restrain, or coerce their employees in the exercise of the employees' rights under the National Labor Relations Act.

WE WILL recognize and bargain with LOCAL 455, upon request as the exclusive bargaining representative of the employees of our Employer-members in the above-described unit with regard to grievances, labor disputes, wages, rates, hours of employment or other terms and conditions of employment.

WE WILL sign and instruct our Employer-members to sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of our Association.

WE WILL instruct our Employer-members to offer to all their employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their senority or other rights and privileges, and to make whole their employees for any loss of pay they may have suffered by reason of their failure and refusal to reinstate them to their former jobs or substantially equivalent ones upon their unconditional offers to return to work.

Appendix A

INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC.
(*Bargaining Association*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX B

FORM NLRB-4727 (3-48) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455, or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810; or to any labor organization.

Appendix B

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

Appendix B

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

ACHILLES CONSTRUCTION CO., INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX C

FORM NLRB-4707 (5-69) JD-137-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455, or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810; or to any labor organization.

Appendix C

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

Appendix C

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

IKENSON IRON WORKS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

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APPENDIX D

FORM NLRB-4727 (5-69) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455, or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810; or to any labor organization.

Appendix D

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

Appendix D

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

KUNO STEEL PRODUCTS CORP.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

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APPENDIX E

FORM NLRB-4707 (9-68) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810; or to any labor organization.

Appendix E

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

Appendix E

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

THE PEELLE COMPANY
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX F

FORM NLRB-4727 (9-68) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810; or to any labor organization.

Appendix F

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

Appendix F

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

SPIGNER AND SONS STRUCTURAL STEEL CO., INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX G

JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix G

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the unit above-described unless and until LOCAL 810 may be certified by the National Labor Relations Board as the bargaining representative of such employees.

WE WILL NOT give effect to the collective-bargaining agreement entered into by us with LOCAL 810 on February 17, 1976, or to any modification, extension, or renewal thereof, or to any superseding contracts with LOCAL 810, unless and until LOCAL 810 may be certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative, of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all

Appendix G

supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

S. CERVENKA AND SONS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX H

JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455, or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

WE WILL NOT threaten our employees that we will discharge them and close our plant if they continue to support LOCAL 455.

WE WILL NOT inform our employees that we intend to sign a contract with LOCAL 810 or inform our employees that we will never sign a contract with LOCAL 455, nor will we tell our employees that we want another union because of LOCAL 455's strike, and thereby encourage our employees to join LOCAL 810.

WE WILL NOT further encourage our employees to join LOCAL 810 by asking them to go with us to the LOCAL 810 offices or remain present at such offices as a LOCAL 810 agent or officer asks our employees to join or support LOCAL 810.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Em-

ployer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

ROMA IRON WORKS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX I

FORM NLRB-4727 (5-68) JD-137-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix I

WE WILL NOT threaten our employees with discharge unless they give up their membership in LOCAL 455.

WE WILL NOT tell our employees that we will never sign a contract with LOCAL 455.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

TROJAN STEEL CORP.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix I

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX J

FORM NLRB-4727 (9-69) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employee-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix J

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

HEUSER IRON WORKS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix J

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX K

FORM NLRB-4727 (9-68) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to Local 810, or to any labor organization.

Appendix K

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the unit above-described unless and until LOCAL 810 is certified by the National Labor Relations Board as the exclusive bargaining representative of such employees.

WE WILL NOT give any further effect to our collective-bargaining agreement with LOCAL 810 signed by us on January 9, 1976, or to any modifications, extension, supplement or renewal of that agreement, unless and until LOCAL 810 is certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit

consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976 between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

WE WILL reimburse all our present and former employees for any initiation fees, dues, or any assessments of any nature they may have paid to Local 810 pursuant to the terms of our unlawful contract with Local 810, with interest at the rate of 6 percent per annum, computed from the dates the said moneys were paid to Local 810.

MOHAWK STEEL FABRICATORS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX L

JD-137-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810. AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix L

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the unit above-described unless and until LOCAL 810 is certified by the National Labor Relations Board as the exclusive bargaining representative of such employees.

WE WILL NOT give any further effect to our collective-bargaining agreement with LOCAL 810 signed by us on January 30, 1976, or to any modification, extension, supplement or renewal of that agreement, unless and until LOCAL 810 is certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of

Appendix L

all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

WE WILL reimburse all our present and former employees for any initiation fees, dues, or any assessments of any nature they may have paid to Local 810 pursuant to the terms of our unlawful contract with Local 810, with interest at the rate of 6 percent per annum, computed from the dates the said moneys were paid to Local 810.

KOENIG IRON WORKS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix L

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX M

FORM NLRB-4707 (5-65) 3D-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

WE WILL NOT urge or encourage our employees in the unit above-described to support or join LOCAL 810 or to give up their membership in, or support of, LOCAL 455.

Appendix M

WE WILL NOT tell our employees that we have signed a contract with LOCAL 810, or that we will not deal with, recognize, bargain or sign a contract with LOCAL 455.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the unit described above until LOCAL 810 is certified by the National Labor Relations Board as the exclusive bargaining representative of our employees.

WE WILL NOT give further effect to the collective-bargaining agreement with LOCAL 810 which we signed on December 5, 1975, or to any modification, extension, supplement or renewal of that agreement, or to any superseding contracts with LOCAL 810 unless and until that union has been certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent

positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

PAXTON METALCRAFT CORP., DIVISION
OF APEX INDUSTRIES, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX N

JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix N

WE WILL NOT tell our employees in the above-described unit that we will not employ them unless they give up their membership in, or support of LOCAL 455.

WE WILL NOT tell our employees that we have ceased to recognize or bargain with LOCAL 455.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the above-described unit unless and until LOCAL 810 is certified by the National Labor Relations Board as the exclusive representative of such employees.

WE WILL NOT give further effect to the collective-bargaining agreement with LOCAL 810 which we signed on January 28, 1976, or to any modification, extension, supplement or renewal of the agreement, or to any superseding contracts with LOCAL 810, unless and until LOCAL 810 is certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs,

Appendix N

or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

MASTER IRON CRAFT CORP.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix N

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APPENDIX O

JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix O

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize 810 as the bargaining representative of our employees in the unit above-described unless and until LOCAL 810 is certified by the National Labor Relations Board as the exclusive bargaining representative of such employees.

WE WILL NOT give further effect to our collective-bargaining agreement with LOCAL 810 signed by us on December 22, 1975, or to any modification, extension, supplement or renewal of that agreement, unless and until LOCAL 810 is certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-

Appendix O

bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

MELTO METAL PRODUCTS CO., INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix O

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX P

FORM NLRB-4727 (3-48) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix P

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the unit above-described unless and until LOCAL 810 is certified by the National Labor Relations Board as the exclusive bargaining representative of such employees.

WE WILL NOT give any further effect to our collective-bargaining agreement with LOCAL 810 signed by us on November 18, 1975, or to any modification, extension, supplement or renewal of that agreement, unless and until LOCAL 810 is certified by the National Labor Relations Board.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-

Appendix P

bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

ROMAN IRON WORKS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix P

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX Q

JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix Q

WE WILL NOT urge or solicit our employees in the unit described above to join LOCAL 810 or to give up their membership in, or support of, LOCAL 455.

WE WILL NOT threaten to close our business unless our employees in the unit described above give up their membership in and support of LOCAL 455 or join LOCAL 810.

WE WILL NOT tell our employees that we will never sign a contract with LOCAL 455.

WE WILL NOT offer our employees, in the unit described above, improvements in their working conditions in order to induce these employees to support and join LOCAL 810 or to give up their membership in, or support of, LOCAL 455.

WE WILL NOT threaten our employees, as described above, that we will fire them or take any other action detrimental to them in order to induce them to support or join LOCAL 810 or to give up their membership in, or support of, LOCAL 455.

WE WILL NOT urge or encourage our employees to go to the offices of LOCAL 810, or offer to take them to the offices of LOCAL 810, or take them to the LOCAL 810 offices, or to remain with our employees in the LOCAL 810 offices and participate with agents of LOCAL 810 in asking our said employees to join or support that union.

WE WILL NOT discourage membership in LOCAL 810 by firing or in any other way discriminating against our employees in regard to hiring, laying off or any other term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

Appendix Q

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees in the unit above-described unless and until LOCAL 810 has been certified as such representative by the National Labor Relations Board.

WE WILL NOT give further effect to the collective-bargaining agreement with LOCAL 810 which we signed on January 6, 1976, or to any modification, extension, supplement or renewal of that agreement, or to any superseding contracts with LOCAL 810, unless and until that union has been certified by the National Labor Relations Board.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Em-

Appendix Q

ployer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL offer to MICHAEL FRENNA immediate and full reinstatement to his former or substantially equivalent job without prejudice to his seniority or other rights and privileges, and we will pay him for any loss of wages he has suffered because of our discrimination against him, such payment to be made with interest.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

LONG ISLAND STEEL PRODUCTS CO., INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix Q

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX R

JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to recognize or bargain with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., exclusive of office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in STEEL, METALS, ALLOYS AND HARDWARE FABRICATORS AND WAREHOUSEMEN, LOCAL 810, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or in any other labor organization, by discriminating in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT in any manner assist or contribute financial or other support to LOCAL 810, or to any labor organization.

Appendix R

WE WILL NOT warn or direct our employees, in the unit described above, not to join or remain members of LOCAL 455 or to stop giving assistance to or supporting LOCAL 455.

WE WILL NOT threaten to fire our employees if they join or remain members of, or support or assist LOCAL 455.

WE WILL NOT warn or advise our employees, or the employees of any other employer, that we will never sign a contract with LOCAL 455, or that we will close our plant before we will sign a contract with LOCAL 455.

WE WILL NOT urge or encourage our employees to go to the offices of LOCAL 810, nor will we offer to transport them to the LOCAL 810 offices.

WE WILL NOT urge or ask our employees to join LOCAL 810 or threaten to fire them if they do not do so.

WE WILL NOT promise our employees improvements in their working conditions in order to induce them to give up their membership in, or support of, LOCAL 455 and to join and support LOCAL 810.

WE WILL NOT discourage membership in LOCAL 455 or encourage membership in LOCAL 810 by firing or otherwise discriminating against our employees with regard to hire, retention of jobs, layoffs, or any other term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL NOT withdraw or withhold authorization from the INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to bargain collectively on our behalf with LOCAL 455 or to execute and administer any agreement reached on our behalf with LOCAL 455.

Appendix R

WE WILL NOT fail or refuse to sign or give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain members of the Association.

WE WILL NOT fail or refuse to offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former or equivalent jobs, or if their jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges.

WE WILL NOT recognize LOCAL 810 as the bargaining representative of our employees, in the unit described above, unless and until LOCAL 810 has been certified as such representative by the National Labor Relations Board.

WE WILL NOT give further effect to the collective-bargaining agreements with LOCAL 810 which we signed on November 20, 1975, or to any modification, extension, supplement or renewal of that agreement, or to any superseding contracts with LOCAL 810, unless and until that union has been certified by the National Labor Relations Board.

WE WILL recognize and bargain collectively with LOCAL 455, upon request, as the exclusive collective-bargaining representative of our employees in a unit consisting of all production and maintenance employees, including plant clerical employees, employed by the Employer-members of the aforesaid Association, exclusive of all office clerical employees, superintendents and all supervisors as defined in Section 2(11) of the Act, with regard to grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

Appendix R

WE WILL sign and give effect to the collective-bargaining agreement dated January 23, 1976, between LOCAL 455 and certain Employer-members of the Association.

WE WILL OFFER to JOSEPH MATZELLE, ADAM GONTARSKI and STANLEY SIEMINSKI immediate and full reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges, and we will pay them for any loss of wages they may have suffered because of our discrimination against them, such payment to be made without interest.

WE WILL offer to all our employees who engaged in a concerted work stoppage and strike commencing on or about July 1, 1975, immediate and full reinstatement to their former jobs, or if their jobs no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges.

WE WILL pay to our employees all the wages they would have earned if we had reinstated them to their former or substantially equivalent jobs when they or LOCAL 455, on their behalf, made an unconditional offer to us to return to work.

GREENPOINT ORNAMENTAL AND STRUCTURAL IRON WORKS, INC.
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix R

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX S

FORM NLRB-4707 (9-68) JD-127-77

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT threaten to inflict physical harm on employees of any Employer-member of INDEPENDENT ASSOCIATION OF STEEL FABRICATORS, INC., to induce the said employees not to cross our picket lines at the plants, yards or facilities of any of the said Employers.

WE WILL NOT picket at any of the above Employers' plants, yards or facilities in such a manner as to block ingress into or egress out of those places in order to prevent employees of the said Employers from crossing our picket lines.

WE WILL NOT coercively take photographs of employees of Employer-members of the said Association in order to induce the employees not to cross our picket lines.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of their rights guaranteed them by the National Labor Relations Act.

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

Appendix S

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 Telephone (212) 596-7709.

APPENDIX T

Page	*Line*	*Change*
115	18	Carline to Charla
117	20, 24	Carline to Charla
233	7, 14	18 to 810
234	12	18 to 810
251	4	June to January
252	5	might lead to mislead
258	5	March to maybe
272	8	1974 to 1976
338	5	Carline to Charla
330	12	recognition to resignation
385	19	employees to employers
412	24	advise to revise
459	24	18 to 810
460	6, 12	18 to 810
461	1	18 to 810
478	3, 22	18 to 810
479	16	18 to 810
480	24	18 to 810
483	8, 15, 17, 20, 23	18 to 810
484	6	18 to 810
569	19	18 to 810
570	6, 12	18 to 810
571	1, 2, 4	18 to 810
521	16	18 to 810
527	1, 2	18 to 810
575	18	18 to 810
579	22, 23	18 to 810
580	18	18 to 810

Supreme Court, U. S.
FILED
DEC 12 1978
MICHAEL RODAK, JR., CLERK

No. 78-902

In the Supreme Court of the United States

OCTOBER TERM, 1978

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, AND ORNAMENTAL IRON WORKERS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

JOHN S. IRVING
General Counsel
National Labor Relations Board
Washington, D.C. 20570

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-902

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, AND ORNAMENTAL IRON WORKERS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

The petition for a writ of certiorari was not timely filed. The judgment of the court of appeals was entered on September 6, 1978 (Pet. App. 7a). The petition for a writ of certiorari was due to be filed within 90 days after the entry of judgment, *i.e.*, by December 5, 1978 (a Tuesday), 28 U.S.C. 2101(c). The petition was not filed until December 6, 1978. The time limit specified by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 417-418 (1923).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JOHN S. IRVING
General Counsel
National Labor Relations Board

DECEMBER 1978

DOJ-1978-12